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U.S. CUSTOMS SERVICE REGULATIONS

MF104

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE U.S. CUSTOMS SERVICE REGULATIONS OF MARITIME ACTIVITIES

JULY 23, 1985

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U.S. CUSTOMS SERVICE REGULATIONS OF MARITIME ACTIVITIES

TUESDAY, JULY 23, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Walter B. Jones (chairman of the subcommittee) presiding.

Present: Representatives Jones, Oberstar, Lowry, Tauzin, Foglietta, Young, Carney, and Bentley.

Staff present: Kurt Oxley; Mark Aspinwall; Barbara Cavas, chief clerk; Edmund B. Welch, chief counsel; Bob Kaufman; and George Pence, minority staff director.

OPENING STATEMENT OF HON. WALTER B. JONES, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Mr. JONES. The Subcommittee on Oversight and Investigations will come to order, please.

Today's hearing will serve to reintroduce members of the Oversight and Investigations Subcommittee of the House Merchant Marine and Fisheries Committee and representatives of the U.S. Customs Service. Interaction between the two bodies has, in the past, been sporadic at best. This hearing will provide the subcommittee with an opportunity to become familiar with various aspects of Customs Service operations as well as some problems they face in the performance of their duties.

The subcommittee members should remember that the U.S. Customs Service, in the performance of its duties, relies upon legislation which is sometimes outdated or unclear. In that they serve only as an implementing agency, they should not be questioned as to their suggestions for future legislation.

Although the Customs Service frequently impacts areas within the jurisdiction of the Merchant Marine and Fisheries Committee, we will review only five areas this morning.

The first is a possible disparity between east and west coast Customs staffing levels when viewed in light of seaport cargo volumes.

Second, we will hear testimony regarding the process whereby a foreign-flag vessel is permitted to enter the coastwise trade—a market normally reserved for American-flag vessels.

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Third is the issue of the 24-hour rule and its changing impact upon the passenger cruise ship industry.

The fourth point to be reviewed is the use of foreign-flag warehouse ships and supply vessels to service oil and gas exploration activities on the Outer Continental Shelf.

Finally, we will hear testimony regarding the enforcement of coastwise trade regulations.

To discuss these points, we have three panels who will be testifying. The first panel is comprised of representatives of the U.S. Customs Service. The second will serve to represent ports, carriers and shippers. The final panel will testify regarding the Outer Continental Shelf issue.

I would like to thank those present today and look forward to the continued positive working relationship between this committee and the U.S. Customs Service.

The Chair recognizes Mr. Carney.

STATEMENT OF HON. WILLIAM CARNEY, A U.S. REPRESENTATIVE FROM NEW YORK

Mr. CARNEY. Mr. Chairman, I want to commend you for calling these hearings, and I welcome this opportunity to educate myself and this committee on the role of the Customs Service on maritime affairs. The activities of the Service touches on virtually every area of concern to this committee, as you have so well stated. Customs is responsible for preventing drug carriers from smuggling in drugs through our ports. Every American is concerned about drug abuse and the mounting problem of drug smuggling. I would hope at a later date we could have people from Customs back to discuss that problem.

But they also have the responsibility for defining U.S. jurisdiction on the Continental Shelf for administrative U.S. coastwise trade laws. These rulings may have a significant impact not only on the ability of our maritime industry to recover and compete effectively with foreign competitors, but also on the incentives to exploit and develop alternative sources of energy. It is, therefore, timely and necessary for this Service, the maritime industry and the oil industry to enlighten this committee on these important issues.

Customs is responsible for cargo clearance in the U.S. ports. In light of the importance of maritime trade to the industry and consumers, we need to ensure that our clearing procedures operate as effectively and as efficiently as possible.

We have the good fortune of having an informed group of witnesses to discuss these important issues, and I look forward to a stimulating and informative hearing.

Mr. JONES. Mrs. Bentley.

STATEMENT OF HON. HELEN DELICH BENTLEY, A U.S. REPRESENTATIVE FROM MARYLAND

Mrs. BENTLEY. I have no special statement, Mr. Chairman, other than to thank you for calling this hearing, because I think it is time we do get into the whole picture of Customs operations.

Mr. JONES. Thank you very much.

At this point in the hearing, I would like to, by unanimous consent, submit for the record the statement of Hon. Don Bonker, who can't be present. Without objection, so ordered.

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[The statement of Don Bonker follows:]

STATEMENT BY HON. DON BONKER, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. Chairman, I want to begin by commending you and the other members of the Oversight and Investigations Subcommittee for your leadership in scheduling this hearing, and for identifying Customs Service operations as a major issue affecting ports and waterborne commerce throughout the nation.

Perhaps nowhere are the issues and problems surrounding Customs Service operations more pressing than on the West Coast, where our cargo trade and passenger volumes are rapidly outstripping Customs resources, often resulting in lengthy delays.

While inadequate Customs manpower is a coastwide or nationwide problem, let me illustrate by citing the example of the Port of Seattle. The value of maritime cargo arriving at the Port of Seattle has increased by 51 percent between 1979 and 1983. International air passenger arrivals have increased by 107 percent. Yet the number of Customs inspectors has actually declined. This has resulted in lengthy delays for both cargo and passengers. As a number of Northwest interests testified at a hearing in Seattle February 15th, Seattle—and indeed a number of ports nationwide—is in danger of being identified as a "problem port" by foreign shippers and passengers unless the Customs manpower situation is resolved quickly.

The Reagan Administration's attitude toward the important role of the Customs Service in processing imports, assessing duties, clearing overseas passengers, drug enforcement, and a whole host of other activities has been disappointing. Once again, the White House budget proposal for fiscal year 1986 called for a deep reduction in Customs Service personnel. Under the President's plan, some 887 Customs employees would have been terminated, including perhaps 400 to 500 inspectors and import specialists.

Fortunately, Congress has recognized the vital role Customs plays, and has resisted the Administration's short-sighted proposals. Congress has also begun to recognize the special problems confronting West Coast ports, where cargo and passenger volume has increased dramatically and Customs manpower has failed to keep pace.

The fiscal year 1986 Treasury Appropriations bill, which the House will consider later this week, provides a total of $725 million for Customs Service operations next year, up from $640 million in the current year. Specifically, the Appropriations Committee has restored the 887 positions that the President's budget sought to eliminate, and has provided funding for an additional 800 positions. I believe this kind of personnel increase is long overdue, given the growth in international trade, international passenger volumes, the need for drug interdiction, and the other Congressionally-mandated responsibilities facing Customs.

The Treasury Appropriations bill also recognizes the intense and immediate need for additional Customs inspectors and other personnel in specific ports. Telllingly, the bulk of these ports are on the West Coast. Under the bill, the Seattle Customs District would recieve an additional 40 positions, Los Angeles would receive an additional 100, San Diego an additional 20, Hawaii an additional 24, El Paso an additional 30, and Baltimore an additional 20 Customs positions. The remaining two-thirds of the newly-authorized positions would be allocated nationwide on the basis of high-priority needs.

I want to commend my colleagues from the Appropriations Committee who pushed to make these additional Customs resources available nationwide, particularly Chairman Roybal and my Washington Colleague Norm Dicks. The Appropriations bill represents a good first step toward resolving some of the problems which have dogged Customs operations in recent years.

In my opinion, the Administration, and Customs itself have failed to identify the specific responsibilities before Customs. As a result, Customs' limited resources have been divided between a wide variety of activities and this has at times hampered the central responsibilities of import processing, enforcement of our import laws and agreements, clearance of international passengers, and drug enforcement.

The challenge before the Subcommittee today, and before Congress, is to sort through all of the international trade and law enforcement responsibilities of the Customs Service, arrive at a coherent set of priority goals and responsibilities for Customs, and give them the resources necessary to do the job.

Mr. JONES. Also I understand that there is a unanimous-consent request that I be permitted to offer the statement of Hon. Mario Biaggi, who also apparently cannot be present. Without objection, so ordered.

[The statement of Mario Biaggi follows:]

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STATEMENT OF HON. MARIO BIAGGI, CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Mr. Chairman, the Customs Service has a number of responsibilities and functions that directly impact the maritime interests of the United States. Two areas of responsibility have been in the forefront recently.

First, Customs' responsibility for the entry and clearance of cargo and vessels at United States ports plays a significant role in the ability of shipping companies using U.S. ports to provide efficient and timely service to its shippers.

Second, Customs' interpretations of the Jones Act—as applied to the Outer Continental Shelf (OCS)—impact significantly on U.S. companies operating on the OCS.

I am concerned that delays in cargo clearance, which have been experienced at U.S. ports, have adversely affected vessels operating in the U.S. trades. These delays result in additional expense for the operators, and longer delays at some ports place operators at a competitive disadvantage when using those ports rather than others. The specific ports affected also suffer because of this disadvantage.

We must ensure that the Customs Service receives funding adequate to provide efficient and effective service to U.S. ports and to the shipping companies using those ports. I recognize that Customs Service appropriations have been cut in recent years—just as so many other programs have been. The importance of the Customs Service, however, requires that we ensure that these cutbacks—although necessary because of the Nation's economic problems—do not undermine Customs' ability to adequately perform its functions in clearing cargo and vessels at U.S. ports.

I am also concerned about interpretations of the Outer Continental Shelf Lands Act (OCSLA) at it applies to the extension of the Jones Act to the OCS. A recent series of rulings regarding the use of foreign-flag warehouse vessels on the OCS is of particular concern. The final ruling in this series determined that a foreign-flag warehouse vessel—when anchored to the OCS—is a coastwise point and is, therefore, subject to the requirements of the Jones Act. Support vessels carrying supplies to an anchored warehouse vessel and from there to a drilling rig must be U.S.-flag vessels.

It is my understanding, however, that warehouse vessel operators on the OCS now keep these vessels moving at all times and continue to use foreign-flag supply boats to ferry foreign-origin cargo to the rigs. Although this interpretation may be technically correct, it is an obvious attempt to circumvent Customs' latest ruling and the intent of the Jones Act.

The use of warehouse vessels is not the only area of concern. Other areas in which problems have been experienced deal with ruling regarding Gravel islands and the use of foreign-flag icebreakers, hovercraft, diving support vessels, and launch barges.

Because of the lack of adequate legislative history in the Outer Continental Shelf Lands Act, the Customs Service necessarily has issued technical rulings on a case-by-case basis regarding the application of the Jones Act to this type of activity. These rulings can cover only a limited scope and can be circumvented easily in most instances. I believe it is time to amend the OCSLA to clarify that all activities on the OCS be conducted by U.S.-flag vessels qualified to operated inthe coastwise trade under the Jones Act.

Mr. JONES. We will proceed with our first witness, and that is Mr. Edward B. Gable, Director of the Carriers, Drawback and Bonds Division for the Customs Service. He is accompanied by Mr. Samuel H. Banks, Acting Director, Office of Cargo Enforcement and Facilitation.

Mr. Gable, you are recognized. You may proceed.

STATEMENTS OF EDWARD B. GABLE, JR., DIRECTOR, CARRIERS, DRAWBACK AND BONDS DIVISION, U.S. CUSTOMS SERVICE; AND SAMUEL H. BANKS, ACTING DIRECTOR, OFFICE OF CARGO ENFORCEMENT AND FACILITATION, CUSTOMS SERVICE

Mr. GABLE. Thank you, Mr. Chairman.

Mr. Chairman, I have a prepared statement which I can either read or enter into the record and comment on it, whichever you would prefer.

Mr. JONES. By unanimous consent, your prepared statement will be entered into the record, and you may proceed informally subject to questions perhaps later. You may proceed.

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Mr. GABLE. Thank you, Mr. Chairman.

We appreciate the opportunity to testify here this morning at your hearing. Perhaps first I might give some brief background on the Customs Service. The Customs Service is probably the oldest Federal agency. We were created by the fifth act of the first Congress of the United States, July 31, 1789. We are a law enforcement and revenue collection agency. We administer and enforce the Tariff Act of 1930 and other Customs laws. We administer hundreds of laws for some 40 other Federal agencies, because we are the Federal presence at the border at 300 ports of entry, and we administer and enforce certain navigation laws of the United States.

My division, the Division of Carriers, Drawback and Bonds at Customs Service headquarters, is one of four legal division at headquarters responsible for issuing rulings and decisions under laws administered by the Customs Service.

In 1984, calendar year, we issued some 16,000 rulings and decisions, and as of March 31, 1985, we had 80 attorneys, paralegals, and that includes supervisory attorneys. My particular division, among other subjects, issues rulings and decisions on the navigation laws of the United States.

An attachment to your invitation, Mr. Chairman, indicated certain areas that you wanted us to address this morning, the four areas which you just mentioned a few moments ago involving the issuance of rulings and decisions. After I do that, you also want us to address the area of Customs cargo clearance and numbers of inspectors on the east and west coast. Mr. Banks will do that. And then, of course, we will be pleased to try and answer any of your questions.

The first ruling area that I understand you wanted me to address is the area of the waivers of the navigation laws. We do this under an act of December 27, 1950. The act is very brief, two sections long. It says if the Secretary of Defense requests the waiver in the interest of national defense, it is mandatory upon us, we will issue such a waiver. That 1950 law also says that where the Secretary of Defense does not request such a waiver, then the Secretary of the Treasury himself has the authority to issue a waiver on recommendation of another Federal agency or on his own initiative.

Since 1950, we have issued some 132 waivers under that law. I think they can be separated into four separate categories. Fifteen of the first nineteen waivers were at the request of the Department of Commerce and related to waivers of Coast Guard inspection matters. That relates to a Coast Guard function. Coast Guard was transferred to the Department of Transportation in 1967, so we haven't issued that type of waiver for many, many, many years.

The second category consists of 39 waivers issued over a period of about 5 years, starting in 1954, at the request of the Department of Defense to allow Canadian-flag vessels to be used in the construction of the St. Lawrence Seaway. It is a very special category, the seaway having been completed long ago.

The third category consists of 64 waivers granted at the specific request of the Department of Defense. Under the law such a waiver is mandatory. We immediately will grant such a waiver. The remaining 14 waivers were issued by the Secretary of the Treasury at

the request of various Federal agencies, the Atomic Energy Commission for one, the Department of Agriculture for another, or on our own initiative. There is a breakdown in my prepared statement.

When we receive a waiver request, Mr. Chairman, if there is no indication in the request of any interest of national defense at all, we will deny it. We won't refer it to any other Federal agency, not even Defense. We will deny such a request. And we receive many of those that are immediately denied. Some rather strange—there was one request for a waiver of the coastwise laws to permit the use of foreign-built submarines to carry missionaries between points in the United States. We don't know how serious that was, but it was treated as a request. We denied it right away. There was no indication to us of any national defense interest.

If there is claimed to be an interest of national defense, we will always refer such a request to the Department of Defense. We will also refer it to any other Federal agencies that we think have an interest, where there is apparent interest of another agency: Department of Energy, Interior, whatever.

With the exception of the old Coast Guard inspection waivers, the 39 waivers for the St. Lawrence Seaway project, the 64 special waivers requested by the Department of Defense where a waiver is mandatory, actually under the law of December 27, 1950, there are only 14 left that were granted—4 of those were simply extensions and 1 was revoked shortly after it was granted. Still, it may well be that we are somehow not carrying out the intent of Congress in issuing these waivers. We would certainly appreciate and welcome any clarification on the way we operate under this law.

The second area that the attachment to your invitation asked me to address, Mr. Chairman, is the recent amendment of the coastwise passenger regulation. Here, Mr. Chairman, fully recognizing the very sensitive nature of the coastwise laws, we took a somewhat unusual step when we announced this in the Federal Register. Normally we would propose rulemaking and ask for comments. In this case, we took an earlier step. We printed in the Federal Register an advance notice, let the world know what we were thinking about. That was in April 1984. We received some 193 comments; 183 were favorable.

So we proceeded, and in January 1985, we published a proposed notice of the coastwise passenger amendment that we intended to make. There were 176 comments this time, Mr. Chairman; 163 were favorable. So in July 1985, we published—July 1 1985, effective the end of this month, we published the amendment in the Federal Register.

In the Federal Register documents, we don't discuss the favorable comments very much, but we do attempt to discuss at length the opposing comments. In view of those three Federal Register documents, I am not sure I should go on and explain the amendment much more—you may want to ask me some questions about it. But I won't go into it any further at this time, with two exceptions.

Your invitation did ask me to address the question of our authority for issuing this amendment to the regulations. The law is section 8 of the Passenger Act of 1886. It is one sentence long. It is rather clear, I think. It states that no foreign vessels shall transport passengers between U.S. points or places directly or by way of

a foreign port under penalty of $200 for each passenger so transported and landed. One sentence. Not terribly ambiguous, I think.

However, about 20 years later a case came along that indicated that we had to look at more than the letter of the law. That was a case involving the German-flag passenger vessel *Cleveland*. Six-hundred and fifteen passengers were picked up on the vessel at New York. They were transported by way of foreign ports to San Francisco and landed. That would seem to be a clear violation of the wording of the statute.

Customs assessed penalties. The case was appealed up to the highest level. It finally resulted in an opinion of the attorney general, a published opinion, on February 26, 1910. The Attorney General said that the statute was not violated. He said the cruise was so extensive with a number of foreign ports touched that it was clear to the Attorney General that the object of the passengers was the cruise, not the transportation between New York and San Francisco.

In effect, the Attorney General said you must look at the spirit of the statute because that transportation certainly would have been in violation of the clear wording of the statute. So for the first time we had in the Cleveland attorney general's opinion this idea that we have to look at the spirit of the statute, when a foreign vessel touches foreign ports on such a cruise. The opinion did not consider a pure domestic cruise. But only one that includes foreign ports on its itinerary.

Some years later, in 1940, there was the first Federal court decision and the only major court decision we know about on the statute. It was a case involving a Honduran-flag vessel, the *Grenada*. The *Grenada* picked up 11 passengers in New York and transported them by way of Mexico to Philadelphia where they left the vessel. They were given railroad fare to get back to New York. Again, it certainly seemed to be a clear transportation between U.S. points. The passengers were picked up on a foreign vessel in New York, transported to Philadelphia by way of a foreign port and landed.

The Federal court in the *Grenada* case stated very flatly, in words that I have set forth in the prepared statement, that the Court was bound to look at "the spirit of the statute" and that it was clear that the passengers did not intend to go to Philadelphia from New York by foreign vessel by way of Mexico. The Attorney General's opinion in the *Cleveland* case and the Federal Court opinion in the *Grenada* case provide our authority for issuing the regulation amendment.

The regulation, Mr. Chairman, eliminated the old 24-hour rule. Under the former rule, if I could give an example, let's say a foreign-flag passenger vessel picked up 500 passengers in Miami, they went on a Caribbean cruise, touched nearby foreign ports in the Caribbean and touched a second U.S. port, let's say New Orleans. The passengers went ashore temporarily, returned to the vessel, came back to Miami. Under our 24-hour rule in such a situation, if the vessel remained in the second U.S. port, New Orleans over 24 hours, there were automatic violations of the coastwise laws. Penalties were assessed even though all the passengers reboarded the vessel in New Orleans and returned to Miami.

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We have received over the years numerous complaints from American citizens, American seaports, chambers of commerce, and others stating that the 24-hour rule drives foreign cruise vessels into foreign ports where tourists can spend time, and they either don't include secondary U.S. ports on their itineraries or they spend less than 24 hours there. The result is U.S. seaports losing revenue, losing tourist trade. In the favorable comments we received, we even received one AFL–CIO Union comment, the Hotel and Restaurant Employees and Bartenders Union.

There is one other question on the passenger regulation that I believe the staff asked me to address. I don't believe this is in the attachment to your invitation, Mr. Chairman, but they asked me to address the question of does the term "foreign vessel" in the statute mean foreign-built vessels or only foreign-flag vessels? In my prepared statement, Mr. Chairman, I have given the citations of the various statutes whereby we are firmly convinced the term does mean foreign built as well as foreign-flag. Certainly Congress has felt this way too over the years where Congress has passed special private bills because vessels were foreign built.

I won't repeat all those citations at this time, Mr. Chairman, they are in the prepared statement. However, we believe that one other factor the committee should look at is that if we in Customs or if the Congress stated that the term "foreign vessel" in the statute did not include foreign-built vessels, then it certainly is conceivable that all the hundreds of American-built, American-flag passenger vessels on our inland waterways, our lakes, our rivers, the ferry boats could be replaced by foreign-built vessels. This would be something to consider, I think, by the Congress.

A third area that you asked me to address, Mr. Chairman, is the question of the applicability of the Jones Act on the Outer Continental Shelf. The Jones Act, 46 U.S.C. 883, the law that prohibits foreign-built or foreign-flag vessels from transporting merchandise between U.S. "points" or places, has been no great problem for us with regard to determining what "points" or places are covered by that statute, when you are talking about transportation between seaports in the United States and in our territorial waters. They are geographic "points."

If a foreign-built vessel attempted to take merchandise between two "points" in the same harbor in Los Angeles or Houston, any city, we would consider that a violation of the law. The "point" is simply a geographical point. However, in 1953, Congress extended the applicability of the Jones Act by section 4(a) of the Outer Continental Shelf Lands Act [OCSLA]. The Congress stated in the 1953 act that laws of the United States are extended to the subsoil and seabed of the Outer Continental Shelf, artificial islands and installations and other devices attached to the shelf and erected thereon for the purpose of developing, exploring for and production of resources of the shelf.

Shortly after that act was enacted in 1953, the Customs Service was faced with the question of does it mean—does section 4(a) of the act, the OCSLA Act, does it mean that the Jones Act really is extended to structures and what not on the shelf? We determined that it did mean that, and this determination was published in the form of a January 1957 Treasury decision.

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Then over the years, we have continued—in response to questions for rulings, we have indicated that the Jones Act applies to drilling rigs, to artificial islands, to attached platforms, to this structure, to that type of device. A problem, however, that we have had all along in trying to determine the applicability of the Jones Act is that neither the 1953 act nor the major 1978 amendments or the legislative history of the 1953 act or the legislative history of the 1978 amendments defines "installations and other devices" "attached" to the shelf or "artificial island."

Well, when we receive a request for a ruling, we have to rule. We can't do anything else. And so without statutory definitions, without legislative history, without a court decisions, we have to struggle and research and come up with what we think is proper, with what we think and hope is the intent of Congress. I have an excellent staff of attorneys who are able to do that very capably in my opinion.

Finally, however, the rulings, which were not all that difficult perhaps in the beginning, began to move into perhaps a gray area, and there were three rulings that I understand you want me to address that have recently been of special interest to the committee.

One is the question of marker buoys. In 1980, we had the question as to whether or not the Jones Act applied to a marker buoy attached to the shelf to mark a drilling site. It was ruled yes, the Jones Act does apply to a marker buoy. In March 1984, I think it was, Chairman Caroll Hubbard of your subcommittee on the Outer Continental Shelf informed us of hearings he was going to hold, and he asked questions about this marker buoy ruling.

We then took the opportunity to reconsider it. We reviewed the ruling, and we reached a conclusion, in fact, that in the 1980 decision we had gone too far, that a marker buoy attached to the shelf is not an installation, a device as defined in the Outer Continental Shelf Lands Act. To say that the coastwise laws apply to a marker buoy, we concluded, went too far, so we informed Chairman Hubbard we were revoking the marker buoy ruling.

Later, a second ruling was issued—there were two of them on the same subject, December 1984, and I think January 1985—relating to warehouse vessels on the shelf. The question was if a warehouse vessel comes in from a foreign country with foreign-laden supplies and sits over the Outer Continental Shelf of the United States and then supplies drilling rigs by smaller supply boats moving between them, is that warehouse vessel a "point" to which the Jones Act applies?

If the answer is yes, then the supply boats moving between the warehouse vessel and the rig would have to be U.S. built and U.S. flag. We first ruled no, the warehouse vessel is not a "point" to which the Jones Act applies. We did not see mere anchoring of a vessel as coming within the words used in the Outer Continental Shelf Lands Act, that is, attached to the shelf and erected thereon for the purpose of exploiting the resources and so on. We didn't believe an anchored vessel, anchored really on the high seas over the Outer Continental Shelf, not within our territorial waters, we didn't believe the vessel had become a "point" to which the Jones Act applied.

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We have received numerous congressional inquiries about this, and many inquiries—actually on both sides of the question, from private industry, saying we were right, saying we were wrong. Finally, of course, Mr. Chairman, we received your letter, in April, signed also by Mr. Lent and by four other Congressmen, and you told us what the intent of Congress was in the 1978 amendments on this point.

Well, it is difficult to find a body in the United States that would know more about the intent of the law than this committee, and so, Mr. Chairman, we felt that is exactly what we want, and so as you know, we reversed our two rulings and stated that a warehouse vessel that is anchored for the purpose of supplying a drilling rig is, in fact, a "point" to which the Jones Act applies so that smaller supply vessels operating between the anchored vessel and rigs would have to be U.S. flag, U.S. built.

The third area that I was asked to address relating to the Outer Continental Shelf rulings is the artificial island series of rulings. Here, as I say, neither the law nor the legislative history defines what is meant by an artificial island. We received an inquiry for a ruling on the use of a Canadian vessel to take gravel out to a point off Alaska to build an artificial island. We were asked to rule on whether the Jones Act applied to this transportation of gravel between the U.S. mainland and where the construction of the artificial island was going on.

Well, we determined that the result of the first dropping of boulders or gravel on the seabed under the water did not meet any definition of island that we could find. But we did find two Supreme Court decisions that, in fact, do indicate what an island is, when it is created. These Supreme Court decisions are not cited in my prepared statement because I didn't hear until yesterday that you wanted me to address the artificial island ruling. I could, however, send a copy of our published ruling published in the Customs Bulletin as C.S.D. 83-94, to the committee later, if that is agreeable.

The net result of the artificial island ruling is that when the gravel reaches a point above mean high water, at that point it becomes an artificial island. At that point, the Jones Act applies under section 4(a) of the Outer Continental Shelf Lands Act, and at that point, the Canadian-flag vessel can no longer be used. A U.S.-flag U.S.-built vessel would have to be used thereafter as work on the island goes on.

The last area I was asked to address, Mr. Chairman, is the area of sanctions for violations of the coastwise laws. All the coastwise laws we administer have sanctions built right into them. I describe those in the prepared statement.

I was also asked just yesterday by the committee whether or not I could describe the process Customs goes through when we find a violation of the law, from the initial violation on through, I suppose, referral to a U.S. attorney, if necessary, for action. I told your staff when I was asked this yesterday, Mr. Chairman, it is a complex procedure. In a very simple way, we either hear about a violation from perhaps an informer, from a competitor, or our own officers will find out about it. Customs officers will assess the statutory liabilities, either penalties or seizure of a vessel or merchandise, whatever the liability is. This is very brief. The parties are notified

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of their liability. They are given the right to petition for relief to show us there are mitigating circumstances existing and perhaps at that stage the case can be settled. If we don't reach a settlement or grant partial relief that they won't accept, eventually we refer the case to the U.S. attorney.

Now, we have what is known—the Customs Service some years ago issued a booklet, it is about 150 pages, called "The Fines, Penalties, and Forfeitures Handbook." That handbook goes through every stage of the investigative procedure, the penalty procedure. If it is agreeable, Mr. Chairman, I can send a copy of that handbook to the committee. I suspect this is exactly what the staff is looking for.

[The statement and material follow:]

PREPARED STATEMENT OF EDWARD B. GABLE, JR., DIRECTOR, CARRIERS, DRAWBACK, AND BONDS DIVISION, U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

Good morning. I am Ed Gable, Director of the Carriers, Drawback and Bonds Division of the U.S. Customs Service. With me is Sam Banks, Acting Director, Office of Cargo Enforcement, U.S. Customs Service. We are pleased to offer the views of the Customs Service at your hearing on various aspects of our regulation of marine activities.

The U.S. Customs Service, an agency within the Department of the Treasury, was established by the fifth act of the first Congress, passed on July 31, 1789. It is the primary border enforcement agency and a major collector of revenue. In addition to administering and enforcing the Tariff Act of 1930 and other Customs laws and hundreds of laws and regulations of some 40 other Federal Agencies governing international traffic and trade, the Customs Service also administers and enforces many provisions of the navigation laws of the United States. The statutory responsibilities of the Customs Service include the control, regulation, and facilitation of the movement of carriers between the United States and foreign nations and certain carrier movements between points within the United States.

My Division is one of four legal Divisions at Customs Headquarters charged with the responsibility of issuing rulings and decisions under the laws and regulations administered and enforced by the Customs Service. During calendar year 1984, 16,048 rulings and decisions identified by a 6-digit number under Customs Case Inventory System were issued by the four Divisions. As of March 31, 1985, there were 80 attorneys and paralegals (including supervisory attorneys) in the four Divisions. In addition to other subjects, my Division is responsible for issuing rulings and decisions under the navigation laws.

An attachment to your invitation to this hearing indicates that of special interest to the Committee at this time are four areas involving the issuance of rulings and decisions under the navigation laws administered by the Customs Service. The attachment also states the Committee's interest in cargo clearance procedures applied by Customs, including the number of inspectors assigned to ports of entry on the East and West Coasts. With your permission, I will first address the four areas involving rulings and decisions under the navigation laws and then Mr. Banks will discuss Customs cargo clearance procedures.

The first decision area mentioned in the attachment to your invitation involves the authority to issue waivers of the coastwise laws. The statutory authority is the Act of December 27, 1950. Briefly, it provides that when the Secretary of Defense requests a waiver of the navigation laws (and of course that term includes the coastwise laws) in the interest of national defense, it is mandatory that the Secretary of Treasury issue the waiver. In the event the Secretary of Defense does not make such a request, the Secretary of the Treasury has the authority under the statute to issue the waiver upon the written recommendation of any other Federal agency or upon his own initiative when he deems such action necessary in the interest of national defense.

To date 132 waivers have been issued by our agency under the Act of December 27, 1950. Of those, 15 of the first 19 were requested by the Commerce Department, and concerned Coast Guard inspection certificates, a matter handled by the Department of Transportation since Coast Guard was transferred from Treasury to that agency on April 1, 1967. Over a period of about five years, starting in late 1954, 39 waivers were issued at the request of the Department of Defense for the use of Ca-

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nadian-flag vessels in the construction of the St. Lawrence Seaway. Of the remaining 78 waivers, 64 were issued at the request of the Department of Defense, 4 upon the recommendation of the Department of Agriculture (actually, 3 were extensions of the first), 2 upon the recommendation of the Department of Interior, 1 each upon the recommendation of the Department of Commerce, the Atomic Energy Commission, and the Federal Aviation Agency, and 5 by Treasury on its own initiative after comments were received from other Federal agencies.

When we receive a request for a waiver of the coastwise laws and there is no claim or any indication that the waiver would be in the interest of national defense, the request is denied on that basis with no further action. If we receive a waiver request and a national defense interest is claimed or indicated by the correspondence, we always refer the request to the Department of defense for their comments. We also refer such a request to other Federal agencies we believe might have an interest. If the Department of Defense requests that the waiver be issued, we immediately do so. If Defense does not make such a request, we consider the recommendations of other Federal agencies and make a decision on whether or not to grant a waiver. The question that must be favorably answered before a waiver not requested by Defense is issued is whether or not we can determine that the waiver is in the i[illegible] of national defense. Normally waivers are issued for one vessel for one voyage or for a limited period of time. Excluding the 15 early Coast Guard inspection waivers, the 39 St. Lawrence Seaway waivers, the 64 waivers requested by Defense, and 5 waivers which were only limited extensions of existing waivers, there have been 9 waivers issued since the Act of December 27, 1950, was enacted. We of course will appreciate any clarification on the intent of Congress in granting the authority to grant waivers in the interest of national defense.

The second decision area mentioned in the attachment to your invitation concerns the recent amendment of section 4.80a, Customs Regulations (19 CFR 4.80a), which relates to the coastwise transportation of passengers by vessels not qualified to engage in the coastwise trade.

We first set forth a detailed explanation of our proposal in an advance notice published in the Federal Register on April 25, 1984 (49 FR 17769), resulting in 193 comments (183 favorable and 10 opposed). On January 9, 1985, we published in the Federal Register (50 FR 1060) specific proposed language for the amendment, with a detailed discussion of the 10 opposing comments we had received, resulting in 176 comments (163 favorable and 13 opposed). Finally, on July 1, 1985, we published the final amendment in the Federal Register (50 FR 26981), with a detailed discussion of the 13 opposing comments we had received.

In view of the three Federal Register publications, it is assumed that a detailed explanation in this prepared statement is not necessary. However, the attachment to your invitation does ask one specific question, i.e., "does this new rulemaking conform to Customs' statutory authority under the Act?" The reference to "the Act" is to section 8 of the Passenger Act of 1886 (46 U.S.C. 289), a one-sentence statute stating "No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed."

Some twenty years after the statute was enacted, a case arose that made it clear that at least in a situation where a passenger vessel touches a foreign port, the spirit rather than the letter of the law must prevail in the administration of the statute. The German-flag vessel Cleveland embarked 615 passengers at New York and transported them by way of foreign ports to San Francisco where they were disembarked. In a published opinion issued on February 26, 1910 (28 O.A.G. 204), the Attorney General held that the transportation to and landing of the New York passengers at San Francisco was not in violation of the statute because "The object of this voyage was the landing of the vessel at numerous foreign ports to enable the passengers to visit various points in different parts of the Old World which are of special interest to tourists, and the return of the passengers to the port in California was a mere incident to this object." The need to consider factors other than the strict letter of the statute was clearly spelled out in the only major federal court decision on the subject in the case of The Granda, 35 Supp. 892 (1940). The Honduran-flag vessel Granda embarked 11 passengers at New York and transported them by way of foreign ports to Philadelphia where, due to cargo commitments of the vessel, they were given railroad fare to New York and disembarked. The Court held that the transportation to and landing of the New York passengers at Philadelphia was not in violation of the statute. The Court stated "I recognize, as the United States urges, that ordinarily I am restrained in such a case from construing the statute. However, even a cursory consideration of the possible factual circumstances indicates that ther must be a line of demarcation—a point at which the statute is

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not applicable despite presence of the apparent requisites. . . . The question then is, whether the transportation in this instance comes within the spirit as well as the letter of the law. . . . The object in the transportation of the passengers on the Granda was to afford them a cruise to a foreign port, not to engage in commerce between United States ports. . . . I cannot see how this transportation was detrimental to the coastwise monopoly sought to be assured to United States vessels. Nor can I see how this transportation fits within the spirit of the act as reasonably interpreted." With regard to passengers embarking at United States ports on foreign vessels and engaging in voyages touching nearby foreign ports, we believe that permitting those passengers to go ashore temporarily at other United States ports for more than 24 hours is within the spirit of the law as reasonably interpreted. In fact, it is difficult to find in the one-sentence statute any real basis for a 24-hour or any other time limit on passengers going ashore temporarily at a second United States port. Of course, if our interpretation is not in accord with the intent of Congress, we would welcome clarification by the Congress.

The staff of your Committee has requested that we address the basis of Customs rulings that the term "foreign vessel" in 46 U.S.C. 289 refers to United States-flag vessels that are foreign-built as well as to foreign-flag vessels. It should be noted that in response to a comment on the proposal to amend section 4.80a, Customs Regulations, section 4.80a(b) has been worded to clearly state the applicability of the statute to such vessels.

Revised Statute 4132 (from the Act of December 31, 1792), as amended by the Act of August 24, 1912 (see 46 U.S.C. 11), provided that foreign-built vessels "shall not engage in the coastwise trade." These provisions were repealed and replaced by sections 110(d) and 111(a)(2) of Public Law 96-594 (46 U.S.C. 65h and 65i). The provisions were later codified into positive law by Public Law 98-89 and are set forth at 46 U.S.C. 12105(d) and 12106(a)(2)(A).

While the above is the statutory basis for holding that 46 U.S.C. 289 applies to foreign-built as well as foreign-flag vessels, we also believe it is important to consider the consequences of a determination that the statute did not apply to United States-flag foreign-built vessels. All the many ferryboats and other commercial passenger vessels operating on the rivers, lakes, and other inland waterways of the United States, now all United States-built, could be replaced by foreign-built vessels.

The third decision area mentioned in the attachment to your invitation concerns the applicability of the Jones Act (46 U.S.C. 883) to the outer continental shelf of the United States. The Outer Continental Shelf Lands Act (OCSLA) was enacted on August 7, 1953, and is primarily administered by the Departments of the Interior and Energy. However, section 4(a) of the OCSLA (43 U.S.C. 1333(a)) does provide for the extension of certain laws of the United States. In a decision dated December 11, 1956, the Customs Service held that under section 4(a) of the OCSLA, the coastwise laws of the United States were extended to mobile rigs during the period they were secured to or submerged onto the seabed of the shelf. This ruling was published as Treasury Decision 54281(1) on January 9, 1957. Subsequent administrative rulings issued under section 4(a) of the OCSLA have applied the coastwise laws to drilling platforms, artificial islands, and similar structures.

A problem we have always had in applying the coastwise laws under section 4(a) of the OCSLA is that neither the legislative history of the OCSLA as enacted on August 7, 1953, nor the legislative history of the major amendments of the OCSLA enacted on September 18, 1978, indicate to any great extent the intent of Congress. House Report No. 95-590 and House Conference Report No. 95-1474, concerning the 1978 amendments, recognize that Customs applies the coastwise laws to "artificial islands and structures, including rigs" on the shelf (page 129, House Report) and "fixed OCS platforms or mobile rigs secured to or submerged onto the OCS for drilling" (page 124, note 1, House Conference Report). Both reports indicate no intent to change existing law in this regard (page 129, House Report, and pages 80 and 124, note 1, House Conference Report).

Notwithstanding the absence of legislative history on the applicability of the coastwise laws under the OCSLA, we have necessarily continued to issue rulings and decisions in response to requests. As you know, two recent cases have been of special interest to your Committee.

On October 22, 1980, we held that the coastwise laws applied to marker buoys attached to the seabed of the shelf for the purpose of resource exploration. In response to an inquiry from Congressman Carroll Hubbard, Chairman, Subcommittee on Panama Canal/Outer Continental Shelf, we further reviewed our rulings and reconsidered the issue in general and concluded that a marker buoy attached to the shelf for the sole purpose of marking or indicating a drill site is not an "installation" or "other device" attached to the seabed for producing resources therefrom, as those

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terms are used in section 4(a) of the OCSLA. By letter of March 20, 1984, we informed Chairman Hubbard that we intended to revoke the ruling of October 22, 1980. This was formally done by Customs Service Decision 84-96, published in the Customs Bulletin.

On December 6, 1984, and January 17, 1985, we held that a foreign-flag warehouse vessel, anchored at a point on the shelf at which there is not, will not, and has not been drilling, digging, or some other activity on the seabed of the shelf comprising the exploring for, developing, or producing of resources from the shelf, is not a coastwise point by virtue of section 4(a) of the OCSLA. In the absence of legislative history to the contrary, we believed that no other position was possible under our interpretation of section 4(a) of the OCSLA. However, we then received your letter of April 17, 1985, Mr. Chairman, which had the concurrence of Congressman Norman Lent, senior minority member, and Congressmen John Breaux, Jack Brooks, W.J. Tauzin, Don Young, and Jack Fields. After further considering the matter in light of the statements in your letter as to the intent of the Congress in the 1978 amendments to the OCSLA, on May 9, 1985, we revoked the two earlier rulings and held that a warehouse vessel anchored at a point over the shelf is considered a coastwise point when it is used to supply drilling rigs on the shelf. Therefore, supply vessels used to transport such supplies between the warehouse vessel and drilling rigs on the shelf would be required to coastwise/qualified vessels. We have been asked whether we would issue a ruling that the coastwise laws are applicable under section 4(a) of the OCSLA to a warehouse vessel on the high seas that is not anchored to or attached in any other way to the shelf. As we understand section 4(a) of the OCSLA, we do not believe the Customs Service has authority to issue such a ruling and believe that legislative action would be required.

The fourth decision area mentioned in the attachment to your invitation concerns sanctions for violation of the coastwise laws. There are two major and three other coastwise laws administered and enforced by the Customs Service and each provides for liabilities for violations. The coastwise statute relating to passengers (46 U.S.C. 289) provides for a penalty of $200 against the vessel for each passenger illegally transported. The coastwise statute relating to merchandise, known as the Jones Act (46 U.S.C. 883), provides for forfeiture of the merchandise illegally transported or a penalty up to the value of that merchandise. The coastwise statute relating to dredging (46 U.S.C 292) provides for forfeiture of the vessel, the statute relating to towing (46 U.S.C. 316(a)) provides for a fine of not less than $250 nor more than $1,000 and a penalty of $50 per ton, and the statute relating to salvaging operations (46 U.S.C. 316(d)) provides for forfeiture of the vessel.

Thank you for allowing me to testify here today. My colleague, Mr. Banks, will now address the subject of cargo clearance procedures. We will then be delighted to answer any questions you may have.

[Excerpt from "The Fines, Penalties and Forfeitures Handbook"]

(C.S.D. 83-94)

This ruling holds that an artificial island being built on the Outer Continental Shelf with gravel carried by foreign-built barges becomes a point in the United States for purposes of the coastwise laws. Therefore, the use of such foreign-built barges under consideration would be prohibited when any part of the incipient island is above the level of mean high water because such transportation would be coastwise trade in violation of 46 U.S.C. 883.

Date: May 13, 1983
File: VES-3-15-CO:R:CD:C
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This ruling concerns the applicability of the coastwise laws to the transportation of gravel by foreign-built barges from a point in the United States to a location on the Outer Continental Shelf where the gravel would be used to create an artifical island which would be used for exploratory oil well drilling operations.

Issue. May foreign-built barges be used to transport gravel from a point in the United States to a location on the Outer Continental Shelf where the gravel would be used to create an artifical island which would be used for exploratory oil well drilling operations?

Facts: The inquirer represents a United States corporation which proposes to use four Canadian-built bottom dumping barges which it owns in connection with the construction of an artifical island off the north coast of Alaska. The barges would be used to transport gravel from Thetis Island in Harrison Bay on the Beaufort Sea in

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Alaska to a location outside United States territorial waters. The barges are unmanned and the dump machinery aboard each barge is radio controlled.

The inquirer states that the prospective artifical island site is presently undeveloped sea bottom and the barges would only be used to dump gravel at the site. Exploratory drilling operations would not be performed on the artificial island until construction was completed. We assume, for purposes of this ruling, that no device or installation, such as a marker buoy or pilings, would be attached to or submerged into the subsoil or seabed while the barges were transporting the gravel.

The inquirer requests a ruling that the above-described activity does not constitute coastwise trade because it does not constitute transportation of merchandise between points in the United States within the meaning of 46 U.S.C. 883.

Law and analysis: Title 46, United States Code, section 883, in pertinent part, prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. A point in United States territorial waters is considered a point embraced within the coastwise laws of the United States, for purposes of this provision. Customs has ruled that "merchandise," for purposes of section 883, includes anything of commercial value, including dredged or otherwise obtained material that is to be used to create an island or jetty.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)) (OCSLA), provides, in pertinent part, that the laws of the United States are extended to "* * * the subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purposes of exploring for, developing, or producing resources therefrom * * * to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

Under the foregoing provision, we have ruled that the coastwise laws are extended to mobile rigs during the period they are secured or surmerged onto the seabed of the Outer Continental Shelf (Treasury Decision 54281(1)). Subsequent rulings applied the same principles to drilling platforms, artificial islands, and similar structures. Pursuant to the 1978 amendment to the OCSLA (discussed below), the coastwise laws were ruled to extend to devices such as a buoy marker submerged onto or attached to the Outer Continental Shelf for the purposes of resource exploration operations and to a well casing with attendant accessory systems when submerged into the seabed of the Outer Continental Shelf. However, we have never ruled that gravel dumped onto the Outer Continental Shelf which with the accretions thereto, is to create an artificial island is an installation or device attached to the seabed, as those terms are used in the OCSLA. (See House Report 95-590 on the 1978 amendment to the OCSLA, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534, for a list of the kind of articles which Congress intended to include within those terms.) Section 4(a) of the OCSLA specifically provides for artificial islands and we believe that the inquirer's question must be resolved by determining the applicability of that term to the operation he proposes.

Before its amendment by the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629, 635) (1978 Amendments), section 4(a) extended the laws of the United States "* * * to all artificial islands and fixed structures which may be erected [on the subsoil and seabed of the Outer Continental Shelf] for the purpose of exploring for, developing, removing, and transporting resources therefrom * * *" The purpose of the amendment of section 4(a) in the 1978 Amendments was stated to be to make it clean "* * * that Federal law is to be applicable to all activities on all devices in contact with the seabed for exploration, development, and production." (House Report 95-590 on the 1978 Amendments, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.) There is no indication in this legislative history of any purposes to change the applicability of United States laws to artificial islands erected on the Outer Continental Shelf. Thus, under section 4(a) of the OCSLA, the laws of the United States are extended to all artifical islands erected on the subsoil or seabed of the Outer Continental Shelf or the purpose of exploring for, developing, or producing resources therefrom.

The United States Supreme Court has held that an island is a "* * * naturally-formed area of land surrounded by water, which is above the level of mean high water." (*United States v. California*, 382 U.S. 448, 449, 86 S. Ct. 607, 15 L. Ed. 2d 517, 518 (1966).) Mean high water has been defined by the Supreme Court to be the average height of all high waters over a given location during a span of 18.6 years. (*Borax Consolidated, Ltd., et al. v. City of Los Angeles*, 926 U.S. 10 27, 56 S. Ct. 23, 31, 80 L. Ed. 9, 20 (1935). See also *United States v. Ray* 294 F. Supp. 532 (D.C. Fla.

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1969), affirmed in part and reversed in part on other grounds, 423 F. 2d 16, which uses the foregoing definitions in the context of applying the OCSLA.) The word "artificial" is defined as "contrived through human art, or effort and not by natural causes detached from human agency." (*Webster's International Dictionary of the English Language, Unabridged*, 1971, page 124). Accordingly, an artificial island may be defined as "a man-made area of land surrounded by water, which is above the level of mean high water."

In applying the coastwise laws to the Outer Continental Shelf under section 4(a) of the OCSLA, we have ruled that when a drilling platform is attached to the Outer Continental Shelf it becomes a fixed structure and is embraced within the coastwise laws *even though the structure has not been completed.* We have also ruled that a buoy marker which is submerged onto or attached to the Outer Continental Shelf for the purpose of resource exploration operations is a coastwise point and transportation of passengers and/or merchandise thereto from a United States coastwise point by a non-coastwise-qualified vessel would be prohibited.

In neither of the foregoing instances was the device or structure on the Outer Continental Shelf engaging or capable of engaging in exploration operations *at the times* it was ruled to be a point in the United States for the purposes of the coastwise laws Analogously, we conclude that as soon as the incipient articicial island under consideration meets the definition of artificial island given above, it would become a point in the United States, for purposes of the coastwise laws. Therefore, use of the non-coastwise-qualified barges under consideration to transport gravel from a coastwise point to the incipient artificial island would be prohibited by 46 U.S.C. 883 when any part of it was above the level of mean high water, whether or not it was at that time used or capable of being used for exploring, developing, or producing resources from the Outer Continental Shelf. This is so because although exploratory drilling operations may not actually be performed on the artificial island until construction is completed and the barges are no longer transporting gravel to it, the artificial island would be "* * * erected [on the subsoil or seabed of the Outer Continental Shelf] *for the purposes of exploring for,* developing, or producing *resources therefrom* * * *." (Section 4(a) of the OCSLA, emphasis added.) Thus, the laws of the United States, including the coastwise laws, would apply as described above in this paragraph, pursuant to section 4(a) of the OCSLA and Treasury Decision 54281(1), referred to above.

The inquirer should be aware that under 46 U.S.C. 292, only a United States-built dredge, with a now obsolete exception, may engage in dredging in the United States, including the territorial waters thereof.

Holdings: 1. Foreign-built barges *may* be used to transport gravel from a point in the United States to location on the Outer Continental Shelf where an artificial island is being constructed with that gravel, without violating 46 U.S.C. 883, until any part of the incipient artificial island is above the level of mean high water.

2. Foreign-built barges *may not* be used to transport gravel from a point in the United States to a location on the Outer Continental Shelf where an artificial island is being contructed with that gravel when any part of the incipient island is above the level of mean high water because such transportation would coastwise trade in violation of 46 U.S.C. 883.

Mr. JONES. The committee would appreciate you doing that, sir.

Mr. GABLE. Thank you, Mr. Chairman.

That is all I will address at this moment. If you agree, Mr. Chairman, Mr. Banks will now discuss the Customs merchandise control procedures, inspectors on the east and west coast, and then we of course would try to answer any questions you might have, Mr. Chairman.

Thank you.

Mr. JONES. Thank you, Mr. Gable.

I have two or three questions, but fortunately, you answered them as you went along. So I have no questions on my part.

Mr. Carney, are there any questions you might have?

Mr. CARNEY. No questions at this time.

Mr. JONES. Mr. Tauzin, any questions to Mr. Gable?

Mr. TAUZIN. Yes; thank you, Mr. Chairman.

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Mr. Gable, in reference to the Customs decision on the foreign ship——

Mr. JONES. Will the gentleman yield? I apologize to Mr. Banks. Did you care to make a statement, or are you accompanying Mr. Gable?

Mr. BANKS. Mr. Chairman, I do have a statement to make. I can do it now or later, whatever your preference is.

Mr. JONES. You may proceed. Then we will have questions to each of you. You are recognized.

Mr. BANKS. Thank you, Mr. Chairman.

My name is Sam Banks. I am the Acting Director of Cargo Enforcement and Facilitation. I would like to address two issues of concern to this committee. The first is on workload and staffing, particularly at seaports, and the second is on our most current customs cargo processing techniques.

For the first 4 years of the 1980's, the total number of full-time customs inspectors throughout our Nation has essentially remained static, 4,490 in 1980 and 4,566 in 1984—about a 75-position increase. Those inspectors are at land borders, airports, preclearance sites, and inland ports as well as seaports. The number of inspectors assigned especially to seaports was 1,364 in 1980 and 1,325 in 1984. During the last 2 years of this period, Customs workloads have increased dramatically.

Air passengers have increased 11 percent internationally. Entries, that is the documentation to gain release of cargo, has increased 36 percent. Air cargo shipments have increased 25 percent during this same period. Surprisingly, the number of sea or ocean bills of lading on a national basis went down 11 percent during this period even though the value of the shipments increased slightly and so did our revenue collections from this activity.

However, there has been a notable shift in the ports of arrival for ocean cargo. On the west coast, the volume of cargo has increased. At eastern gulf ports, the volume has decreased. There has also been a relatively minor shift in the inspectional staff during this period, 14 more inspectors to the west coast and 53 fewer assigned to the east and gulf ports.

In retrospect, this realignment was insufficient to handle the increased burden on many of the west coast ports, and in response to this imbalance we have assigned 48 additional inspector positions and 35 additional clerks to west coast districts with seaports. We are confident this increased staffing, along with our improved cargo screening methods, will move cargo expeditiously.

We have established national standards for inspector to passenger ratios. We have not established inspector to ocean cargo ratios, and the reason we haven't done this is it is virtually impossible to establish such standards because the physical layout of the ports, the different types of cargo and the relative risk and source of the cargo makes every port unique.

Until very recently, Customs was required to inspect one package out of every shipment entering this country.

With the increased workload and basically a stable work force, inspecting one item from every shipment also becomes impractical, if not impossible. Out of necessity, Customs developed a selectivity approach to cargo inspection.

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In other words, by reviewing the shipment or the entry documentation, we identify those shipments that are higher risk, and those we inspect. Those shipments that we determine are of lower risk we basically release on the basis of a simple document review. Very recently this selectivity system—we call it selectivity—has been computerized and installed at 34 major ports of entry throughout the Nation.

Key data from the entry documentation are queried against risk criteria that are in the computer data base. The computer generates an advisory decision to examine or not examine.

Presently about 20 percent of the shipments fall into the examined category and 60 percent fall into the nonexamined category. This mode of operation has greatly speeded our screening process, expedites the cargo flow and also improves our enforcement results.

Another system we are now testing is the automated manifest system, which will electronically transmit the cargo release data to the importing carrier, thereby eliminating a great deal of paperwork and delays caused in processing. It should increase the flow of imported cargo.

We think with these more efficient and effective cargo processing techniques and a realignment of manpower as I have described, we will process cargo more expeditiously throughout the Nation and without the need for additional staffing.

Thank you for allowing me to testify. Mr. Gable and I will answer any questions you might have at this point.

Mr. JONES. Thank you, Mr. Banks. I have one question I might pose to you, Mr. Banks. The Shipping Act of 1984 provided incentives to promote intermodal shipments. The Customs Service has proposed phasing out in-bond shipments where imports are cleared at their destination. Instead, cargo would be cleared through Customs at the port of entry.

Do you feel this is inconsistent with congressional intent to promote intermodalism?

Mr. BANKS. The system we are employing is known as the paired system. This process should compliment intermodalism, and, if anything, should expedite the movement of containers through the country.

Currently the process that we go through for an in-bond shipment is we receive a manifest from a vessel operator that tells us what is coming in. That operator has to prepare in-bond documentation. We have to enter that information into our computer control system at the original inport where the cargo has landed. At the destination port, when the cargo finally arrives, we have to receive that document, in-bond documentation, from the carrier.

We have to reenter the information into a computer to close out the control to make sure we received the cargo, and then we have to receive an entry which says essentially they paid duty on this cargo. The new process that we are trying to go to and that we have implemented in various test versions right now is that we are going to receive a manifest at the arrival port. The Customs entry, the release document, is going to be filed at the point of destination where the cargo is going to end up. That entry is going to be

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screened by our inspectors at the destination point and they are going to notify the originating port that the cargo can be released.

In other words, we are trying to pull Customs out of dictating the way cargo has to move, or dictating it is going to have to move under specific documents.

We seek real savings in this process for both the port authorities, for the ocean carriers in the United States and for Customs.

So we think it is going to be an absolute benefit. Now, the full effective implementation of this system is going to depend upon the completion of our computer system, and it is going to be a little bit of time before that is totally in effect. In the meantime we are proceeding with test versions, and we think it will absolutely help intermodalism in the United States.

Mr. JONES. Thank you, Mr. Banks.

I don't have any more questions, but I do have two questions that I would like to submit to you for the record, and ask that you respond in writing. You have no objections?

Mr. BANKS. Yes, sir, I would be most happy to.

[The questions follow:]

QUESTIONS OF MR. JONES AND ANSWERED BY U.S. CUSTOMS SERVICE

Question. Please provide for the record a timetable for the implementation of the automated clearance system (ACS). What is Customs' policy for determining which ports are utilized in the implementation process?

Answer. The Selectivity module of ACS is already operational at all major seaports except New York. The Automated Brokers Interface (ABI) and Automated Manifest (AMS) Modules can be initiated at those ports whenever the port authorities, brokers and carriers are ready. These functions, ABI nad AMS, are voluntary interfaces and cannot be implmented unilaterally by Customs.

Question. Some ports will have invested a considerable amount of money in the automated systems by the time they are fully operational. Please explain what Customs plans to do with non-confidential manifest data. Will it be available to the ports?

Answer. Customs will transmit to participating port authorities non-confidential manifest data which Customs receives electronically from carriers. That data will be only for shipments unladen at ports under port authority's jurisdiction.

Mr. JONES. Mr. Carney.

Mr. CARNEY. I would like to ask a question if I may. You say that you are tring to expedite the inspection of cargoes coming in and you are doing this by utilizing a system to select those cargoes which you will inspect.

Is there a possibility that you could have people have access to that information now that it is in a computer somewhere floating around, an office that could—that type of informaton would be very, very valuable. What are you doing to secure that computer data?

Mr. BANKS. All right, sir. That is an absolute concern to us. We have had multiple discussions with both port authorities and others to ensure we are retaining our enforcement criteria, our intelligence information within the Customs computer.

We are retaining total control over that computer. And our inspectors out at the ports query directly into our national computer to gain that information as to whether or not that cargo may be released or not.

Now, the computer is just one part of this whole operation, because in addition to that we are not trying to eliminate the judg-

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ment of the individual officer. We are still having our officers that are familiar with the local enforcement concerns still screen that documentation.

Mr. CARNEY. Again, they are screening documentation, they are not physically inspecting the cargo?

Mr. BANKS. It is on the basis of that documentation screening they will decide what cargo needs to be examined and what cargo can be released without examination.

Mr. CARNEY. May I assume that is a dual type of determination being made, one by the local inspector as he has always done, or she has always done, and additionally you are aiding that decision-making process through the utilization of a computer which would kick out cargoes that look suspicious?

Mr. BANKS. That is correct, sir. The computer is going to generate most of the decisions for our cargo inspection work. There is an expedited screening process that makes sure we have certain judgment factors involved also from our local people.

I might add, in our computer we not only have national enforcement information that is of concern throughout the country but we also have local enforcement information entered in that computer, so that we have the information as to what we are going to look at basically up front when we receive the cargo entries.

We are trying to receive the documentation before the vessels ever arrive so we can make a decision early on and notify the carrier prior to the time that the vessel ever arrives, whether we are going to want to look at that cargo or not.

Mr. CARNEY. I don't fully understand that. Why would you notify someone you have to look at his cargo?

Mr. BANKS. Why are we going to notify we are going to look at the cargo?

Mr. CARNEY. Yes.

Mr. BANKS. In essence, we have a third party involved in this issue. With the carrier, it is just transporting the cargo for an importer. They are a neutral party. By being able to prescreen the information, we can even out our workload, we can process a lot more efficiently, and we have more time to make an enforcement decision as to whether or not this is a high risk cargo or not.

And we can notify the carrier that we want certain cargo held and they can go ahead and release the other cargo. It is really not much different than what we are doing now except currently this all occurs after the cargo arrives.

We are retaining the option of course to change our minds at any point as to whether a shipment will be inspected. If we feel there is concern of collusion or conspiracy, something along that line, we can hold any cargo that we want to hold at the time it arrives.

Mr. CARNEY. What specifically do you look for when you inspect cargoes?

Mr. BANKS. There is a full range of things. If you are talking in terms of the information that we are trying to get into our computer to establish the risk levels——

Mr. CARNEY. No, I am asking you a specific question as to what are you looking for when you inspect cargoes? Are you looking for conformity to the shipping format? Are you looking for people smuggling in high technology or smuggling out—I guess you are

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not involved too much with the exiting of cargo, but people smuggling in cargoes around tariffs? Are you looking for drug traffic?

Mr. BANKS. All of the above, yes, sir. The first thing you do in making a normal cargo inspection is that you determine the cargo that is actually in the container or in the box is what it says it is.

In other words, that they have declared it properly and that we are receiving the correct amount of revenue.

We also determine whether or not this cargo might be of interest to the 40 other Federal agencies that we represent. In addition to that, of course, we are looking for narcotics and any other kind of contraband. A full range of issues. And that is in essence what we are trying to do.

Mr. CARNEY. You had mentioned before that there is a disparity between the work force, east and west coasts. Is there an indication of any kind that one coast is subject to more violations than the other? Do you have more problems at certain ports where the cargoes that were supposedly being brought in were different cargoes, drugs or whatever, with violations? Any type of violations?

Do you have a greater amount of violations at different ports?

Mr. BANKS. It fluctuates greatly. We receive general merchandise violations such as quota violations, such as misdescriptions anywhere throughout the country. Those are pretty common violations.

With narcotics, obviously, it is the southeast part of the United States that is heavy with cocaine. We are more concerned with heroin coming into some of the northeast ports and west coast ports. Once again, the southeastern part of the United States is a major point for marijuana. So it depends on the particular commodities and the source countries that the cargo comes from.

Mr. CARNEY. Moving from drugs for a moment because I know we are not focusing on that but more on common commerce, I guess, articles such as clothing, that type of thing, are there any patterns where you would find the illegal shipments into this country at specific ports more so than other ports?

Mr. BANKS. Different ports have a tendency to receive different types of cargo.

New York and Los Angeles are both heavy in textiles so we set up textile enforcement groups specifically for that.

It would happen that a particular port will seem to receive more of one type of cargo or cargo from a particular country that may be high risk. So we specialize in our ports to some extent.

Mr. CARNEY. This might be a question you can or cannot answer, but I was curious, is there any pattern as far as the foreign-flag vessels are concerned where you would find vessels flagged under a certain country or there is a more violation-type thing, or most common offender you might say in relationship to flag vessels? Foreign-flag vessels?

Mr. BANKS. Yes, sir, to some extent, we have concentrated on some lines, for example, those who operate out of source countries particularly for narcotics. We have ended up with violations where we have had recurring incidents of narcotics coming in off a particular line and in those cases, we have seized vessels.

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Mr. CARNEY. Over the past 20 years, I imagine there has been a great shift from the port operations to aircraft operations. What impact has that had on Customs in general?

Mr. BANKS. It has had a tremendous impact at least on the inspectional force, because our inspectors are probably our most versatile resource, they are required to process any kind of cargo, whether it is imported by air, sea, land, or even pipelines. An increase in any particular area will obviously require an equivalent allocation of resources.

What we have been trying to do as I stated, we have aggressively sought to streamline our operations and simplify procedures. We are trying a number of innovative things, particularly in cooperation with the trade community, to implement procedures and especially automation to expedite every aspect of our business.

We have worked with organizations to put in what we call red-green operations, in airports, so we apply our selectivity procedures. It is working. We are processing with essentially the same number of resources, processing more cargo, and we are even receiving more revenue as a result.

Mr. CARNEY. One final question I have of you, Mr. Banks, and that is could you give us a brief idea of how you have utilized modern technology in carrying out your tasks? Do you use sniffing dogs or x ray equipment or any of those types of devices that could readily point out to an inspector that cargoes may not be precisely what they are supposed to be?

Mr. BANKS. Absolutely, sir. We have had our narcotics detector dog program for at least 15 years, I would say. We use it with baggage coming in off aircraft and with cargo both air and ocean cargo. We obviously have gone with computers to a great extent.

We are trying to totally revolutionize our method of processing commercial freight. We are trying to get away from all this paperwork, all the lengthy time it takes just to notify another party that this particular processing act has been accomplished.

In narcotics we use transponders and all sorts of very sophisticated technology.

Mr. CARNEY. A yes or no question. The chairman has the hammer in his hand here, so I don't have much time. Can you justify putting more people on by how much revenue you can obtain for the Treasury?

Mr. BANKS. That is a difficult yes or no question. Yes, you probably could. We prefer to add to our productivity, not our payroll.

Mr. CARNEY. Thank you. Thank you, Mr. Chairman.

Mr. JONES. Mrs. Bentley, would you care to be recognized?

Mrs. BENTLEY. Yes, I do have questions, Mr. Chairman.

Mr. JONES. You may proceed.

Mrs. BENTLEY. Mr. Gable, on the Jones Act ships, I understand that the SS *United States* is going to be refurbished or is supposed to be, supposedly the money now being available, and the ship will go to Hamburg, Germany to have the hotel part of it refurbished.

All the hull work will be done here, I understand.

That is acceptable on that ship.

Why then would a new ship, new passenger ship proposed to be constructed, the hull be constructed in the U.S. yard, the hotel

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work done overseas, why is that not acceptable? What is the difference?

Mr. GABLE. I am sorry, Mrs. Bentley, I didn't——

Mrs. BENTLEY. It would not qualify for calling between American ports under the Jones Act.

Mr. GABLE. If the United States has refurbished and altered the *United States?*

Mrs. BENTLEY. Right. The hotel work on the *United States* is done overseas, all the cabins and all that is done overseas; the ship then could come back and move between U.S. ports. But a new ship built here, all the hull work, all the machinery, et cetera, furnished here, and then the hotel work done overseas would not be permitted to move between U.S. ports.

Why? What is the difference?

Mr. GABLE. Congresswoman, I am not sure I—if a vessel is built in the United States and it is altered overseas to the point where it is considered rebuilt overseas by the Coast Guard, then it would lose its——

Mrs. BENTLEY. I am not talking about rebuilt. I am talking about strictly the hotel part, where you put the curtains on and beds in and all that, and maybe putting in a kitchen.

Mr. GABLE. The *United States*, if it is—if the hotel part; is redone, altered overseas to the extent it is not rebuilt, would not lose its Coast Guard privileges.

Mrs. BENTLEY. I am asking you why will it not—I am not advocating that it be but what I am asking is why would not a new ship going through the same procedure, why would you rule against the new ship being able to have Jones Act privileges, and not the *United States*?

You don't have to answer now. I do want an answer to that.

Mr. GABLE. I certainly will give you an answer. I am sorry I cannot give it to you right now.

[The information follows:]

COASTWISE PRIVILEGES AND THE SS "UNITED STATES"

If a vessel is built in the United States and its owners meet certain statutory citzenship requirements, the vessel is entitled to engage in the coastwise trade. A vessel is considered built in the United States if it meets certain requirments of the U.S. Coast Guard set forth in section 67.09-3, Coast Guard Regulations (46 C.F.R. 67.09-3). If a vessel is altered outside the United States, and application should be filed with the Coast Guard under section 67.27-3, Coast Guard Regulations (46 C.F.R. 67.27-3), to determine if the vessel is still considered United States-built (46 C.F.R. 67.09-3) or will be considered foreign-built and therefore lose its coastwise privileges (46 C.F.R. 67.17-5(c)(3)) and section 4.80(e), Customs Regulations (19 C.F.R. 4.80(e)). Such applications should be filed with Mr. Joseph A. Yglesias, Chief, Merchant Vessel Documentation Division, U.S. Coast Guard (G-MVD/13), Washington, D.C. 20593.

Reference was made at the hearing to the SS *United States*. Informally we have received information that in the fall that vessel will be towed from Norfolk, Virginia, to the Alabama Dry Dock and Shipbuilding Corp. in Mobile, Alabama, where its interior will be remodeled and a deck will be added. We understand that thereafter it will be towed to the Howaldtswerke-Deutsche Werft Shipyard, Hamburg, Germany, for refitting. It is also understood that there may be plans to operate the vessel in the coastwise trade between the west coast and Hawaii. We have been informally advised that the Coast Guard has determined that the proposed work on the vessel in Germany will not result in a determination that the vessel will be considered foreign-built. In any case, the U.S. Coast Guard has the responsibility for making that determination. If the Coast Guard does not determine that the vessel is consid-

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ered foreign-built after the work in Germany and if in fact the vessel is ever entered into the Coastwise trade, the Customs Service would not prohibit such activity because of the work on the vessel in Germany.

Reference was also made at the hearing to the possibility of a new passenger vessel being built partly in the United States and partly overseas. As with the *United States*, we would again look to the Coast Guard to determine whether a vessel built partly in the United States and partly oversees was considered United States or foreign-built. If the Coast Guard determined that the vessel was foreign-built because of the work done overseas, the vessel would of course not have coastwise privileges.

Mrs. BENTLEY. Mr. Banks, just piggybacking a little bit on some of Mr. Carney's questioning, in the days I was with the Federal Maritime Commission, we did take advantage of the Customs invoices and used them for finding violations of the Federal Maritime Commission laws, that is tariff—misdescriptions on tariff, Mr. Carney. Do you still do that with the Federal Maritime Commission?

Mr. BANKS. Yes, ma'am, we do.

Mrs. BENTLEY. Why did you take away the regional office from Baltimore and place it in Boston?

Mr. BANKS. Two regional offices were eliminated, one in Baltimore and one in San Francisco. It was primarily the cost-saving initiative that was involved. We thought we were exercising the same degree of management over these areas.

Mrs. BENTLEY. Are you satisfied that you are doing it?

Mr. BANKS. Yes, ma'am.

Mrs. BENTLEY. Well, we are not. We have found that the backlog and delays of handling traffic through the Port of Baltimore is almost defeating the use of the port by shippers and the Customs is the whole holdup on it, and there are delays of 2 and 3 weeks of getting cargoes through.

The delays are much longer now than in the old days before you had all the automation. When I was down on the waterfront, a shipment could come in and in 48 hours it was out. That is not true anymore. Why?

Mr. BANKS. I am just not aware of that issue.

Mrs. BENTLEY. You have gotten complaints, you have gotten a complaint from the whole Maryland delegation over there on it.

Mr. BANKS. And I know we have had a number of meetings with the Maryland delegation. I was not aware that we had had any situations that even approached those problems. I will be glad to look at it and tender a report to you.

[The information follows:]

CARGO IN BALTIMORE AREA

A June 1985 survey shows that 95 percent of all cargo at Baltimore is released in less than 48 hours. A January 1985 survey indicated that Customs was processing the entries in less time (an average of 4 hours) than it took the brokers to get the release notification to the carriers. The main reason for delays in cargo release was broker error.

Mrs. BENTLEY. You say there are 53 inspectors short—you switched 53 from the east coast to west coast and east and gulf, I think all 53 came out of the Port of Baltimore. I know there are at least 20 out of there. I was being facetious with 53 but I know they are down 20 at least.

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I think I am going to ask you to see that we get better service there, please.

Mr. BANKS. Yes, ma'am.

Mr. JONES. For the record, before I recognize Mr. Tauzin, purely at the parochial level I have a question regarding tobacco. Under the statute charging schedule there are two types of tobacco, one is what is known as stem tobacco—it is supposed to be ground up into small pieces, they call it scrap, I guess. That carries a 16-cent-a-pound tariff.

The same tobacco coming in stemmed, the better grade tobacco, carries a 45-cent-a-pound tariff.

Now, it has come to the attention of some of us who are concerned about the tobacco program that this stemmed tobacco, the better grade tobacco with all the quality and flavor in it and so forth and so on, is being shipped in under the guise of the so-called not-stemmed, in other words, it is chopped up into small particles and comes in under the 16-cent charge to avoid the 45-cent charge.

How much, if any, attention on the part of Customs is being given to this apparent problem which does exist?

Mr. GABLE. Have you heard of this?

Mr. BANKS. No.

Mr. GABLE. I had not heard of it, Mr. Chairman. We can certainly look into it and find out and report back to you. The Classification and Value Division in headquarters may have that problem before them. We will certainly look into it and report back to you.

Mr. JONES. I would certainly appreciate it and appreciate your answer. I think it is generally accepted that this is being violated through a mechanical process, the better tobaccos come in at the lower rate rather than paying the 45-cent-a-pound rate.

Mr. GABLE. We will look into it and report back very quickly.

[The information follows:]

TOBACCO TARIFF

On June 9, 1983, we issued a decision regarding machine-threshed tobacco. It was issued as Treasury Decision 83-148, copy below, and published in the Federal Register on July 12, 1983 (48 F.R. 31954). The decision classified the tobacco under item 170.35, Tariff Schedules of the United States (19 U.S.C. 1202), at the 1985 rate of 26 cents per pound. Our decision is currently under review by the Court of International Trade.

(T.D. 83-148)

Decision Granting Domestic Interested Party Petition Concerning Tariff Classification of Cigarette Leaf Tobacco

Agency: U.S. Customs Service, Department of the Treasury.

Action: Notice of decision granting domestic interested party petition concerning tariff classification of cigarette leaf tobacco.

Summary. In response to a petition from a domestic interested party concerning the tariff classification of imported cigarette leaf tobacco, Customs invited public comments. The petition requested that cigarette leaf tobacco, which has been processed by threshing, shredding, and other acts of manipulation, be classified under the provision for stemmed cigarette leaf filler tobacco, rather than under the general provision for tobacco, manufactured or not manufactured, not specially provided for.

After further review of the matter and consideration of the comments, Customs has decided to grant the domestic interested party petition.

Date: Customs change of classification will be effective with respect to all merchandise entered for consumption or withdrawn from warehouse for consumption more

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than 30 days after the date that notice to the petitioner is published in the Customs Bulletin.

For further information contact: Russell X. Arnold, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5727).

Supplementary information:

BACKGROUND

In a notice published in the Federal Register on January 4, 1983 (48 FR 366), Customs advised the public that a petition had been filed pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of flue-cured tobacco, requesting that certain imported tobacco, which had been machine threshed for use in the manufacture of cigarettes, be classified for tariff purposes as stemmed cigarette leaf filler tobacco under item 170.35, Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202), at a Column 1 rate of duty of 32 cents per pound. The merchandise in question is currently classified under item 170.80, TSUS, as tobacco, manufactured or not manufactured, not specially provided for at a Column 1 rate of duty of 17.5 cents per pound.

The tobacco which is the subject of this petition is machine-threshed tobacco produced by adding moisture to leaf tobacco, mechanically removing the stems, and breaking the remaining tobacco into pieces ranging from ½ inch to 2 inches in size. The resultant product of this processing consists of strips or fragments of tobacco generally used in the manufacture of cigarettes.

In a decision published in the Federal Register on May 20, 1980 (45 FR 33761), Customs determined that this same tobacco was neither scrap tobacco, classifiable under item 170.60, TSUS, nor leaf tobacco, classifiable under item 170.35, TSUS, but that it had been processed to the extent that it was a partially manufactured product classifiable under item 170.80 TSUS.

In the present case, the petitioner contends that Customs current classification of such tobacco is incorrect, has resulted in the avoidance of appropriate tariffs, and has had a serious impact upon producers of domestic flue-cured tabacco. He asserts that the subject tobacco has not been significantly processed toward its end use in cigarette manufacture, and therefore that it is still in leaf form. The petitioner submits that, in the trade, stemmed leaf tobacco includes any leaf product, 81 to 85 percent of which is ½ inch or better in size. He maintains that the TSUS provides for only two types of tobacco, "wrapper" and "filler," and that all tobacco which does not meet the definition of "wrapper" should be treated as "filler." The petitioner further contends that "wrapper" and "filler" are *eo nomine* terms, and since an *eo nomine* provision covers the article in all of its forms, the shredded leaf is covered by the filler tobacco provision. He maintans that the term filler tobacco is more specific than "tobacco, manufactured or not manufactured, not specially provided for", and that since item 170-80, TSUS, is only a catchall classification provision, the subject tobacco is properly classified as stemmed cigarette leaf filler tobacco under item 170.35, TSUS.

DISCUSSION OF COMMENTS

Over one hundred and fifty (150) comments were received in response to the petition.

A majority of the comments support the petition. Most of these statements in support are from farmers and farm group associations. They emphasize the severe economic hardships suffered by the domestic growers as a result of the competition resulting from the large increase in imports.

Comments in opposition to the petition were received from tobacco importers, dealers and processors. They state that the imported merchandise is not a leaf tobacco, but is a highly processed product, which is the end result of a processing which substantially changes the nature of the original leaf. The idea was also expressed that a great increase in revenue would not result from an increase in duty on this tobacco, since the importers would switch from importing the shredded tobacco to importing whole leaf, which has a much lower rate of duty.

DETERMINATION

The subject merchandise is used for the same purpose as the stemmed leaf which is provided for by name in item 170.35, TSUS. While the tobacco at issue is smaller than the tobacco leaf that Customs has traditionally classified as stemmed tobacco leaf, the reduction in size is the result of the modern threshing process used to sepa-

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rate the stem from the more desirable portion of the whole leaf. If the stem separation had resulted in two half leaves, there is no doubt that the product would be known as stemmed cigarette leaf filler tobacco. The fact that technological progress is utilized and a machine is employed in the separation process should not require a change in tariff classification merely because the resultant pieces of leaf are smaller in size. The fragmented tobacco produced by the mechanical operation is no different in quality, physical characteristics, or use than the old fashioned stemmed cigarette leaf accomplished by hand separation. That there is not a material change is indicated by the fact that, under an established Customs practice, the machine threshed leaf tobacco is considered to have undergone only a manipulation, not a manufacture, when the operation is performed in a bonded manipulating warehouse. That the modern mechanical process used to remove the stem from the leaf also results in smaller pieces than half leaves should not control the classification because there has been no substantial transformation into something which is not stemmed leaf tobacco.

Customs now believes that the fact that the subject tobacco leaf is stemmed mechanically should not preclude classification under the TSUS provision for stemmed cigarette leaf filler tobacco.

There is no compelling basis for departing from this specific provision and classifying the product in a general descriptive provision for tobacco, not specially provided for. Nothing in the legislative history or in judicial decisions issued since 1939, the date when the term cigarette leaf tobacco first appeared in the tariff schedules, mandates that machine threshed tobacco has undergone such advancement that precludes the same classification as other stemmed leaf. It is well settled that if an imported article is described in more than one provision in the TSUS, it must be classified under the provision which most specifically describes it.

Accordingly, Customs concludes that the subject tobacco has not been substantially advanced from the form of a stemmed cigarette leaf filler tobacco, and is therefore correctly classified under item 170.35, TSUS.

This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption more than 30 days after the date of publication of this notice in the Customs Bulletin.

AUTHORITY

This notice is being published in accordance with section 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), and section 175.22(a), Customs Regulations (19 CFR 175.22(a)).

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: June 9, 1983.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, July 12, 1983 (48 FR 31954)]

Mr. JONES. Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman. Especially for allowing me a chance to participate in these hearings, I am not a member of the Oversight Committee. Your courtesies are very much appreciated.

Mr. Gable, the issue of the foreign ship in Alaskan waters raises significant concern for those of us who watch the OCS developments in the Gulf of Mexico and who look upon this new procedure by Amoco as a threat to what is a customary practice in servicing the offshore industry in the Gulf of Mexico. So a decision, because it may be a precedent for further activities of that nature, is of great concern to us.

So I would like to go through the rationale by which you arrived at the point you are now.

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In your testimony you clearly say that in the absence of legislative history to the contrary, that you believe that no other position was possible under your interpretation of section 4-A of the Outer Continental Shelf Lands Act, but to rule that an anchored vessel which was supplying wares to an offshore drilling rig was not a U.S. point under the interpretation of that section.

To quote you again, no other interpretation was possible, no other decision was possible.

You went on to say once legislative intent became clear—I suppose the legislative intent that that anchored vessel was actually engaged in part of the process by which minerals were produced from the OCS, was the question, whether or not it was part of producing drilling or exploring.

That seems to be the problem you had. Once legislative intent was expressed to you by the letter we sent to you, that it was then possible to revisit the decision, in fact we reverse it.

Is my interpretation correct? The problem was with whether or not you interpreted the activities of the anchored vessel as being part of the production process on the OCS?

Mr. GABLE. The act as amended in 1978 refers to installations and devices temporarily or permanently attached to the seabed and erected thereon for the purpose of, et cetera, et cetera.

Mr. TAUZIN. Yes.

Mr. GABLE. When we first looked at the question of the anchored warehouse vessel, it was the anchoring that caused us the problem. To say that anchoring was in the words of the statute, attached to the seabed, which may be erected thereon for the purposes of"—it is difficult to see the anchoring as—find an anchored vessel is something "erected" on the seabed. That was the problem we had.

When we received the chairman's letter explaining to us what Congress meant by anchored in the act, fine, then that satisfied us. We followed the chairman's explanation of congressional intent.

Mr. TAUZIN. You——

Mr. GABLE. It was not the "purpose," it was whether the "anchoring" of the vessel was covered by the act.

Mr. TAUZIN. You clearly say there is no provision that prohibits foreign flag vessels or installations in our OCS. I agree with you. Very clearly when the act was amended, that even the conferees clearly said that they wanted to balance, to reconcile the dual concerns of providing the fullest possible employment for Americans in the U.S. Outer Continental Shelf activities and eliminating to the fullest extent possible the likelihood of retaliation by foreign nations against American workers in foreign offshore activities.

So obviously there was meant to be some balance in there.

In regards to the intent of Congress when the OCS Lands Act was passed and the Jones Act jurisdiction extended, and in furtherance of that balance it occurs to many of us that Congress obviously did not mean to keep the foreign wares ship or foreign installation vessels out of the OCS, but in general it meant to encourage and promote employment of Americans in servicing the offshore industry. So, there are really two questions. One, should there be a foreign wares ship in the OCS; and, two, if it is permissible and it appears to be under our law, do you want—do we want to encourage as much as possible throughout interpretations of the law's

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fullest employment of Americans in terms of servicing the industry offshore?

Therefore, the second question, would it not in furtherance of that legislative intent behoove us to interpret our statutes and broadly so to encourage a U.S. supply boat to service that wares ship, whether it be a U.S. or foreign flag wares ship, and whether it be technically anchored or on the OCS or drifting and moving around simply to avoid the technicality of anchorage?

Mr. GABLE. Yes, sir; I think to gain more employment for Americans the supply vessels should be—we should interpret the statute in the direction that you name if that is congressional policy.

There are various American commercial interests on either side, of course, in this situation, but the problem we have is a technical one I am afraid. That is, the very wording of the law. To say that the wording applies to a vessel, the words "attached" and "erected on," that that applies to a vessel not anchored that is moving over the high seas, it seems to us that that requires legislation. We believe we would be going too far to decide that by an administrative ruling.

Mr. TAUZIN. I have read your article about that, you would rather have legislation. Let me perhaps help. A warehouse by its nature, this is a wares ship operating as a warehouse now, has left its ordinary or otherwise function of transporting goods and is now a warehouse of goods in our OCS. You constructively say it is a fixed structure, whether it is moving around the waters—in fact you can drive with an anchor whether it is moving around the waters or not—but because of its activity it is a fixed structure in the OCS operating not for transport but rather for warehousing.

It seems to have been the clear intent of Congress when the OCS Lands Act extended Jones Act jurisdiction to the American OCS, that those actually, technically or constructively fixed installations in our OCS were to be considered points of the United States for purposes of the Jones Act.

Now, if this warehouse can escape that congressional intent by dragging its anchor or by lifting its anchor, then I suggest to you congressional intent will have been thwarted by the interpretation of that in this case.

That is what concerns us so much. If this particular warehouse can technically escape congressional intent and congressional purposes in providing the fullest possible employment for Americans in the OCS provisions, then we will indeed have seen the law misabused in regards to this important congressional policy.

It seems to me there is a way if Customs wanted to, to indeed interpret the statutes that this is a warehouse and not a wares ship anymore, not a transit operation. It is a warehousing operation on our OCS.

I am not asking for a response because frankly, I am making this statement hopefully so that you will think about that concept and maybe give it some more thought.

Let me go further. As part of our Customs laws, do you actually collect dues and fees and other Customs duties from those supplies which might be brought in by this foreign wares shop?

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Mr. GABLE. When foreign supplies are taken to a drilling rig fixed on the shelf, for example, they become subject to duty. That was clearly spelled out in the 1978 amendments.

Mr. TAUZIN. How do you go about monitoring those supplies and assessing and collecting those duties?

Mr. GABLE. Are you aware?

Mr. BANKS. No.

Mr. GABLE. Could I get that information and submit it to you for the record? I am not sure exactly as to the mechanics of how that is done.

I do know that Customs officers have instructions that those foreign supplies are suject to duty. We will fly out to drilling rigs at times. We have helicopters. We have patrol boats. I hate to respond to some extent on perhaps a logical guess type response and would prefer to submit the information for the record.

Mr. TAUZIN. I must assure you that the same, perhaps reluctance you have in describing the operation also causes us great concern. Because indeed it is a strange operation. Not like the operation by which foreign goods are brought in to ordinary ports of the United States and again if Customs persists in ruling that because this warehouse is drifting around instead of holding onto its anchor that we have a different situation here in terms of how we operate with that warehouse. Customs may find itself with some very difficult monitoring and policing problems on its hands with regard to collecting its duties and fees should this become a common practice as it might.

So, learning how you customarily—excuse the pun—go about collecting duties and fees in other cases where supplies are brought in by foreign ships to the offshore areas, will help us in understanding this new phenomenon and how Customs may or may not be able to react to it.

What I am suggesting is it may pose extra problems for which you may also wish to avoid while you are about the business of interpreting the law to provide full American employment in the OCS.

[The information follows:]

DUTY ON MERCHANDISE FOR OCS STRUCTURES

The first published ruling on the applicability of provisions of laws regarding the dutiability of merchandise to installations on the Outer Continental Shelf was Treasury Decision 54281(1), copy below (Attachment D). On September 18, 1978, by Public Law 95-372, Congress clarified the applicability of such tariff laws to foreign-built drilling and production platforms attached to the Outer Continental Shelf and C.S.D. 79-1, copy below (Attachment E), was issued on December 19, 1978.

Customs Headquarters issues a Carrier Control Handbook (Vessels) for the use of customs officers in administering and enforcing navigation laws. The latest version was issued by Headquarters on July 31, 1981. Section 3111.15, copy below (Attachment F), covers laws, regulations, and procedures applicable to the Outer Continental Shelf. Subsection H of section 3111.15, covers the dutiability of foreign merchandise taken to an installation, etc., on the Shelf.

Of course, the Customs Service does not have customs inspectors stationed aboard drilling rigs, etc., attached and erected on the Shelf. Further, the Customs Service is very reluctant to use the only other means of inspecting each shipment from foreign to such a rig, i.e., the life-endangering and time-consuming process of continually flying inspectors to rigs by helicopter. Because of the uniqueness of the offshore construction industry, importers of merchandise from foreign to a rig are to a great extent on their honor to inform Customs by making formal entry of such merchan-

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dise although when we receive information from private parties about unreported importations to a rig we well investigate the matter and issue penalties for any failures to report and, further, when we are aware of ongoing projects involving the importation of merchandise at a rig we will establish a "spot check" procedure (e.g., at Amoco's expense, customs inspectors are transported to the Navarin Basin project in the Bering Sea, thousands of miles from the nearest Customs port of entry, whenever we deem it necessary).

There are seven Customs Regions and I obtained information from them regarding the collection of duty on the importation of merchandise at a rig, etc., on the Shelf. There has been no activity of this type in the Boston, New York, and Chicago Regions. The Miami Region reports that in the region there are presently only five drilling operations. They are all located off the coast of Panama City, Florida, and all supplies to them are domestic and transported from a location directly in front of the Customs office so monitoring the shipments is possible; no foreign merchandise is transported directly to the five rigs. The Houston Region reports that no duty was collected in 1984 on merchandise transported directly from foreign rigs, etc., on the Shelf but that they would certainly investigate if they received reliable information that such importations were occurring. The New Orleans Region reports that no duty was collected in 1984 on merchandise transported directly from foreign to rigs, on the Shelf but that they have received information that there have been such importations and are presently conducting audits of certain companies to determine whether there have been unreported importations. The Los Angeles Region reports that no duty was collected in 1984 on merchandise transported directly from foreign to rigs, etc., on the Shelf but that total collections to date in 1985 are $89,902.49. Further, Customs inspections have been conducted at the importer's expense for all foreign shipments destined for drilling rigs in the Beaufort Sea and other remote locations in and near Alaska. The situation regarding the Amoco Navarin Basin project in the Bering Sea is mentioned above.

[Attachment D]

(T.D. 54281)

Abstract of an unpublished decision

Summary of an unpublished customs decision

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 9, 1957.

To Collectors of Customs and Others Concerned:

The following abstract of a customs decision is published for your information and guidance. (133.121)

D. B. STRUBINGER,
Assistant Commissioner of Customs.

MISCELLANEOUS

(1) *Outer Continental Shelf, customs and navigation laws applied to rigs located on.*—Under section 4 of the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1333), the customs and navigation laws, incuding the coastwise laws, the laws on entrances and clearances of vessels, and the provisions for dutiability of merchandise, are extended to mobile rigs during the period when they are secured to or submerged onto the seabed of the Outer Continental Shelf for drilling operations. The transportation of merchandise between a point in the United States and a rig so located is a coastwise transportation subject, among other things, to the penalty provisions of section 883, title 46, United States Code. A foreign vessel may not engage in such transportation but is not prohibited from transporting merchandise directly to the rig from a foreign port or place if permission to do so is secured in accordance with the provisions of section 447 of the Tariff Act of 1930. Bureau letter, December 11, 1956. (210.01)

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[Attachment E]

CUSTOMS SERVICE DECISIONS

The following is the substance of a recent decision by the U.S. Customs Service where the issue involved is of sufficient general interest to warrant publication in the CUSTOMS BULLETIN.

Dated: December 19, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(C.S.D. 79-1)

Tariff Classification: Foreign-Built Drilling and Production Platforms Attached to the Outer Continental Shelf

The Customs Service has been asked to review its policy on the dutiability of foreign-built drilling and production platforms attached to the Outer Continental Shelf as a result of the passage of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) which amended the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)).

Prior to the enactment of Public Law 95-372, effective September 18, 1978, the Outer Continental Shelf Lands Act stated in pertinent part:

> "The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may erected thereon for the purpose of exploring for developing, removing, and transporting resources therefrom to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

Section 203 of Public Law 95-372 amended section 1333(a)(1) of the act by striking out "and fixed structures" and substituting "and all installations and other devices permanently or temporarily attached to the seabed," and by sriking out "removing, and transporting a resources therefrom" and substituting "or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources."

In discussing this amendment, among others the House and Senate conferees stated their understanding that the Customs Service had interpreted existing section 1333(a)(1) of the act of mean that foreign-built drilling and production platforms are not subject to duty when brought to the waters of the Outer Continental Shelf and attached to the seabed because such platforms are not considered imported until placed on the shelf. The conferees rejected this interpretation as contrary to the intent of Congress in enacting the Outer Continental Shelf Lands Act in 1953. The conferees stated that one of the purposes of the amendment to section 1333(a)(1) was to make it clear that Customs duties are to apply to foreign-built drilling and production platforms brought into the waters of the Outer Continental Shelf for placement so as to be used to develop and produce its minerals. (See S. Rept. No. 95-1091, 95th Cong., 2d sess., 80-81 (1978).)

Customs' position prior to the enactment of Public Law 95-372 is correctly stated by the conferees. In a recent instance, for example, Customs held that, among other things, offshore drilling and production platforms from Japan and Malaysia, each consisting of a jacket and deck, were not "fixed structures" within the meaning of 43 U.S.C. 1333(a)(1) until the jacket and deck were assembled at the site of erection and ready to receive outfitting and ancillary equipment such as cranes, towers, elevators, a connecting steel walking bridge, and living quarters. Accordingly, the platforms were not subject to duty. However, When equipment was brought to these platforms, it was considered imported into Customs territory and subject to duty. (Headquarters decision R:CR:MA (056583), dated May 11, 1978.)

The Customs Service has considered Public Law 95-372 and its attendant legislative history and is now of the opinion that foreign built drilling and production platforms which are not vessels, if permanently or temporarily attached to the seated of the Outer Continental Shelf, would be considered imported into the Customs territory of the United States and subject to the laws and Customs Regulations resulting from such importation.

Decided, foreign-built drilling and production platforms which are not vessels are dutiable upon their attachment, whether temporary or permanent, to the seabed of

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the Outer Continental Shelf. The platforms are classifiable under the provision for other structures and parts of structures, of base metal, in item 652.98, Tariff Schedules of the United States (TSUS). This decision will apply to all merchandise entered for consumption or withdrawn from warehouse for consumption on or after the effective date of Public Law 95-372 (Sept 18, 1978). All prior Headquarters decisions, whether published or unpublished, including T.D. 78-314, are hereby modified to the extent that they are inconsistent with this decision.

[Attachment F]

U.S. CUSTOMS SERVICE DEPARTMENT OF THE TREASURY

CARRIER CONTROL HANDBOOK

PROCEDURES FOR THE ENTRY AND CLEARANCE OF CARRIERS

Part A—Vessels

3111.15 Offshore drilling

A. Customs laws extended to drilling rigs

1. The Outer Continental Shelf Lands Act, 43 USC 1333(a) as amended by Public Law 95-372, extends U.S. jurisdiction to the subsoil and seabed of the Outer Continental Shelf and to artificial islands and all installations and other devices permanently or temporarily attached to the seabed for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources. As a result, the Customs and navigation laws have been extended to drilling rigs during the period they are attached to the Shelf, even though they are outside the territorial waters. (C.S.D. 79-1)

2. Mobile offshore drilling rigs (drill ships, semisubmersibles and jack-up rigs) are deemed "vessels" as that term is used in Part 4 of the Customs Regulations and are subject to the requirements in the laws and regulations administered by the Customs Service which are applicable to conventional vessels.

3. A mobile offshore drilling rig, while in waters subject to U.S. jurisdiction, must comply with all the usual requirements applicable to vessels (example: requirements pertaining to report of arrival, entry and clearance). The requirements would depend on whether the mobile rig is documented as a vessel of the United States, under foreign registry, or undocumented.

4. There is no authority to require entry from, or clearance to foreign ports of mobile offshore drilling rigs which comes to rest at a geographical "point" on the high seas outside U.S. territorial waters over the Outer Continental Shelf unless that point is an artificial island or fixed structure erected on the Shelf. However, once such offshore drilling rig is secured for drilling operations, or otherwise engaged in oil drilling activities on the Shelf, the Customs navigation laws, including the entry and clearance requirements are fully applicable for the duration of such operations. An offshore drilling rig which arrives at, and subsequently departs from, a position on the high seas over the Outer Continental Shelf, other than at a fixed structure, is not deemed to have arrived at or departed from a point within U.S. jurisdiction to which entry and clearance requirements would apply. However, once the drilling rig becomes "attached" to the Shelf, it is considered a "fixed structure" and, as such, the movement of vessels (including other drilling rigs) and civil aircraft to or from it involves the application of entry and clearance requirements.

B. Coastwise activity an prohibitions (including air cabotage prohibitions)

1. Drilling rigs:

a. No Customs law prohibits foreign-flag drilling rigs or vesels from engaging solely in drilling operations on the Outer Continental Shelf or in territorial waters of the United States.

b. A drilling rig engaged solely in drilling at a location within the territorial waters of the United States is not considered to be engaging in coastwise trade.

c. The movement of a drilling rig with its crew, equipment, and stores, from one point embraced within the coastwise laws to another such point is not considered coastwise trade, provided the rig does not take on board passengers or merchandise at one such point and discharge them at another such point.

(1) Crewmembers, oil company personnel, and employees of various subcontractors who are on the rig in connection with its business are not considered passengers under 46 USC 289.

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(2) Persons who are not connected with the operation, navigation, ownership, or business of the rig are considered passengers under 46 USC 289.

(3) A drilling rig may be repaired and/or take on at a point embraced within the coastwise laws, such supplies, equipment, and workers which it will require for its own operation and proceed to a point in U.S. territorial waters or on the Outer Continental Shelf where it will conduct drilling operations and not be considered to be engaged to coastwise trade.

(4) Legitimate equipment and stores carried by a drilling rig for its own use during a drilling operation are not considered merchandise under 46 USC 883.

2. Other vessels:

a. Foreign-flag vessels or United States flag vessels not entitled to engage in coastwise trade may not carry merchandise or passengers between permenent drilling platform or mobile drill rigs "attached" to the Outer Continental Shelf and other "attached" structures or points embraced within the coastwise laws (see Section 3111.15(A)(2)).

b. A foreign auxiliary supply vessel may not transport supplies between coastwise points and a principal supply vessel located in territorial waters.

c. Vessels entitled to engage in coastwise trade may lawfully transport merchandise to a principal supply in U.S. waters. Subsequent transportation of merchandise from the supply vessel to another point within territorial waters, to another vessel in territorial waters, or to an "attached structure would have to be accomplished by U.S. vessels entitled to engage in coastwise trade (see Section 3111.15 (A)(2)).

d. Service vessels transporting supplies, equipment (including equipment in need of repair) and crew to, or from, a mobile drilling rig or permenent platform, in U.S. waters or "attached" to the Outer Continental Shelf, are considered to be in coastwise trade (see Section 3111.15(A)(2)).

e. Transportation of merchansie or passengers from one mobile rig or vessel anchored, but not "attached" to the Outer Continental Shelf to another such anchorage would not be considered coastwise trade, provided the mobile rig or vessel is not a structure "attached" to the seabed (see Section 3111.15(A)(2)).

f. A construction vessel derrick barge, or self-propelled derrick vessel engaged in construction of platforms is not engaged in coastwise trade and may operate under foreign registry. When the movement of material is effected exclusively by the operation of the derrick crane and not by the movement of the vessel, except for necessary movement that are incidental to a lifting operation while it is taking place, such use, including the carriage of the supplies, equipment, and personnel necessary to the vessel's operation and navigation, would not be considered as a use in the coastwise trade. However, the use of a foreign derrick vessel in the coastwise transportation of merchandise would be in violation of the coastwise laws (Legal Determination 3111-02). See Section 3111.15(A)(2).

g. A barge or self-propelled vessel engaged in pipelaying is not engaged in coastwise trade and such vessel may engage in such activities to, from, or between points inside U.S. territorial waters even though under foreign registry. (TD 78-387)

(1) Laying pipe is not a use in the coastwise trade, even when the pipe is laid between two points embraced within the coastwise laws. Further, since the use of a vessel in pipelaying is not a use in the coastwise trade, a foreign-built vessel may carry the pipe which it is to lay between such points. It is the fact that the pipe is not landed but only paid out in the course of the pipelaying operation which makes such operation permissible.

The transportation of pipe by any vessel other than a pipelaying vessel to a pipelaying location at a point within U.S. territorial waters would be considered coastwise trade and would have to be accomplished by a vessel entitled to engage in such trade.

(2) For the purpose of the coastwise laws there is no distinction to be made between repairing pipe and the laying of new pipe. Therefore, the sole use of the work barge in repairing pipe is not a use in the coastwise trade, and, in view of the unique characteristics of pipelaying operations which take them out of the purview of the coastwise laws, the transportation of pipe and repair materials by a work barge, to be used by the crew of the work barge in the repair of the pipeline, is also an activity that is not prohibited by the coastwise laws.

(3) The installation of anodes on a subsea pipeline or offshore drilling platform may have more of a preventive than restorative effect. Such installations are considered to be in the nature of a repair and thus not a use of the repair vessel in the coastwise trade. Since the installation of a preventive substance is an intrinsically foreseeable operation, the transportation of anodes to the repair vessel at the operational location within United States waters must be accomplished by a vessel entitled to engage in the coastwise trade.

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(4) The transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipelaying operations is not an activity prohibited by the coastwise laws since such tools are considered to be part of the legitimate equipment of that vessel.

(5) Use of a vessel in effecting underwater repairs to offshore or subsea structures is not considered a use in coastwise trade. Further, the transportation by the vessel of such materials and tools as are necessary for the accomplishment of the mission of the vessel (i.e., materials to be expended during the course of the underwater inspection and repair operations) is not, generally, speaking, an activity prohibited by the coastwise laws since such transportation is incidental to the vessel's operations.

Materials and tools, as described above, which are necessary for the accomplishment of the mission of the vessel are not considered merchandise within the meaning of 46 USC 883. Any article which is to be installed and therefore, in effect, landed at an offshore drilling platform is normally considered merchandise. If the necessity for the repair of, or the installation of repair materials on to, the underwater portion of the drilling platform is foreseeable and requires a repair material or component of more than de minimus value (such as structural member), the transportation to the repair site must be effected by a vessel entitled to engage in the coastwise trade. A vessel engaging in the inspection and repair of offshore or subsea structure may carry with it repair materials of de minimus value or materials, necessary to accomplish unforeseeable repairs, provided that such materials are usually carried aboard the vessel as supplies.

Transportation of persons or materials takes on a wholly different character if it results in the delivery of such persons or materials to a subsea or offshore structure, such as a drilling platform, for use by such structure. For example, while the transportation of repair materials by the work barge for use by its crew in effecting repairs on or from the barge, or in its service capacity underwater, is not prohibited by the coastwise laws, the delivery of such materials or persons to an offshore drilling platform to effect repairs thereon would be a transportation of something other than the legitimate equipment or crew of the work barge, and as such, would have to be accomplished by a vessel entitled to engage in the coastwise trade.

h. The sole use of a support vessel equipped with submersibles used in servicing oil wells is not coastwise trade.

i. Foreign registered vessels are prohibited under 46 USC 316(a) from towing any vessel or structure from a point embraced within the coastwise laws to another such point including structures "attached" to the Outer Continental Shelf (see Section 3111.15(A)(2)).

j. The use of a vessel in the transportation of "salvaged" materials from offshore drilling platforms or pipelines in U.S. waters, other than pipe being retrieved incidental to a pipeline repair operation, would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade.

k. The use of a vessel in the transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade, and would therefore have to be acomplished by a vessel entitled to engage in the coastwise trade. The sole use of the diving support work barge in lifting and depositing heavy loads at a fixed site in the territorial waters of the United States is not considered coastwise trade and such activity would not be prohibited by the coastwise laws. Further, the mere movement of the work barge incidental to the lifting and depositing of heavy loads at the site of the lifting would not be deemed coastwise trade.

l. The movement of workover rigs from one production platform to another would be considered to be coastwise transportation, but the mere lifting and depositing of such rigs by the crane of the work barge, for transportation on a vessel entitled to engage in coastwise trade, would not of itself be considered a use in the coastwise trade.

m. The use of a vessel in the transportation of a wellhead assembly to a location on the seabed within U.S. waters would be deemed a use in the coastwise trade. The sole use of a vessel in the installation of a wellhead assembly at a location within U.S. waters, after transportation of such assembly by a vessel entitled to engage in the coastwise trade, is not considered a use in coastwise trade, nor is the sole use of a vessel in servicing wellheads. The transportation of wellhead equipment, valves, and valve guards to be installed on an already existing wellhead assembly in the servicing capacity of the work barge by the crew of the work barge is not an activity

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prohibited by the coastwise laws, provided that such materials are of de minimus value or necessary to accomplish unforeseen repairs or adjustments and are usually carried aboard the work barge as supplies. If the necessity for specific wellhead equipment of other materials of more than de minimus value is foreseen, such transportation to the diving site must be effected by a vessel entitled to engage in the coastwise trade.

n. A foreign-built launch barge may be used to transport a jacket and related equipment from any point to a point outside U.S. territorial waters where there is no fixed structure and to launch the jacket to a floating position. The subsequent towing by a foreign vessel of the jacket from the position where launched to a final location outside U.S. territorial waters where there is no fixed structure would not be considered a coastwise transportation. (TD 78-460)

3. Aircraft:

49 USC 1508 prohibits foreign civil aircraft from engaging in air commerce within the U.S. This would include the transportation of passengers, crewmembers, supplies, and other merchandise between a U.S. point and a drilling rig located within territorial waters or "attached" to the Outer Continental Shelf beyond territorial waters. (See Section 3111.15(A)(2)).

C. Entrance and clearance requirements for foreign-flag mobile drilling rigs

1. The movement of a foreign-flag drill rig from a foreign port or place to a point within U.S. territorial waters requires a report of arrival within 24 hours and entry within 48 hours (including the payment of tonnage tax).

2. The movement of a foreign-flag drilling rig from a place on the high seas to a point within U.S. territorial waters requires a report of arrival within 24 hours and entry within 48 hours (and may or may not require the payment of tonnage tax, depending upon the previous port of departure of the foreign-flag drilling rig).

3. The movement of a foreign-flag drilling rig from a foreign port or a place on the high seas to a point on the Outer Continental Shelf beyond U.S. territorial waters would not require a report of arrival or entry provided that point was merely geographical and not a fixed structure, i.e., "attached" to the Outer Continental Shelf (see Section 3111.15(A)(2)).

4. Foreign-flag drilling rigs must obtain a permit-to-proceed from one point within the territorial waters to another point in territorial waters where they come to rest unless both points are within the limits of the same port of entry.

5. Foreign-flag drilling rigs are not required to obtain clearance or permit-to-proceed from a U.S. port or a point embraced within the coastwise laws to a point beyond territorial waters for the purpose of attaching to the Outer Continental Shelf.

D. Entrance and clearance requirements for U.S.-flag mobile drilling rigs

1. A U.S. flag drilling rig moving from a point on the high seas, without having visited a foreign port or place, and arriving at a point within U.S. territorial waters is not required to report arrival or make entry unless carrying bonded or dutiable merchandise.

2. A U.S. flag drilling rig entering U.S. territorial waters or arriving at a fixed structure on the Outer Continental Shelf from a foreign port or place must make entry and is subject to the payment of tonnage tax.

E. Entrance and clearance requirements for service vessels.

1. Foreign-flag vessels or a U.S. vessels with foreign residue cargo must obtain a permit-to-proceed from one drilling rig "attached" to the Outer Continental Shelf to another drilling rig attached to the Outer Continental Shelf, or between a point within U.S. territorial waters and a drilling rig "attached" to the Outer Continental Shelf (see Sectioin 3111.15(A)(2)).

2. Foreign-flag vessels require a permit-to-proceed from one point in territorial waters to another point in territorial waters where they come to rest.

3. Where detailed compliance with permit-to-proceed procedures is not practical, it will be deemed sufficient for a vessel to obtain a permit-to-proceed from one U.S. port to the same or another U.S. port via specified locations in the territorial waters or fixed structures attached to the Outer Continental Shelf where the vessel will conduct its operations and deliver that permit-to-proceed to the first U.S. port at which it arrives upon return (see Section 3111.15(A)(2)).

F. Entrance and clearance of aircraft

1. An American registered helicopter carrying supplies and equipment to and from a foreign-flag drilling rig or platform attached to the Shelf is not considered to

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be engaging in foreign trade and is not subject to entry and clearance requirements (see Section A.2. of this part).

2. Where the helicopter will be landing foreign merchandise for which entry has not been made, or carrying personnel subject to Customs treatment, report of arrival must be made in 24 hours. The merchandise is not to be moved from the original point of arrival without Customs permission.

G. Place where entry and clearance is performed

1. While entry and clearance will normally be effected at the Customhouse, Section 101.4 CR provides that a vessel may be entered at a place other than a port of entry upon the district director's authorization. When entry or clearance is requested (either within or beyond territorial waters), such authorization may only be granted upon the condition that the district director is notified in advance of the vessel's arrival, that the vessel is under Customs supervision as he may deem necessary, that all applicable Customs navigation laws and regulations are complied with, and that the salary and expenses of the Customs officer dispatched to enter or clear the vessel outside port limits for such time as is required to be devoted to entry and clearance work shall be reimbursed to the Government by the owner, master, or agent of the vessel.

2. Granting entry and clearance privileges for a vessel arriving at or departing from a place other than a port of entry is discretionary on the part of the district director. If the district director objects to dispatching a Customs officer to a vessel located at points within or beyond the terrritorial waters because of lack of personnel or because of general administrative impracticability, the privilege may be refused. Of course, entrance and clearance may be effected by the master or vessel agent at the Customhouse, notwithstanding the fact that the vessel is outside port limits.

H. Customs duties

1. General Headnote 5(e) of the Tariff Schedules of the United States Annotated provides that vessels are not subject to duty. Mobile drilling rigs (drill ships, semi-submersibles, and jackup rigs) are considered "vessels" under General Headnote 5(e).

2. Legitimate stores and equipment of the drilling rig are not subject to duty provided they remain aboard the vessel.

3. Neither the foreign-built mobile drilling rig nor its components would be subject to duty upon arrival in the United States.

4. During the period when the mobile rig or permanent platform is "attached" to the seabed of the Outer Continental Shelf for drilling operations, the Customs and navigation laws and the provisions for dutiability of merchandise apply. Therefore, if any American goods or any foreign merchandise upon which duty has been previously paid were transported between a point in the United States (including a port, harbor, or other point in the territorial waters) and a rig or platform attached to the Outer Continental Shelf, no duty would be imposed on these articles. Of course, the transportation of this merchandise between a point in the United States and a platform attached to the Outer Continental Shelf is a coastwise transportation which must be accomplished by a vessel qualified to engage in the coastwise trade. If merchandise is transported directly to a rig or platform from a foreign port or place, the Customs laws relating to the provisions of dutiability of merchandise would apply. The merchandise transported to the rig or platform from a foreign port or place would be subject to dutiable treatment in accordance with the Tariff Schedules. A foreign vessel may transport the merchandise from a foreign port or place in accordance with the provisions of 19 USC 1447 which permits imported merchandise to be landed at a place other than a port of entry. (TD 78-314)

5. Foreign-made oil well casing, drilling mud and cement used during the course of drilling a particular well are dutiable irrespective of whether the drilling is outside the U.S. territorial waters but on the Outer Continental Shelf or inside the territorial waters. These articles when used during the course of drilling a particular well on the Outer Continental Shelf are dutiable because these vessel supplies are imported to a point where Customs laws apply. Supplies used during the course of drilling a particular well inside the territorial waters are dutiable because they are unladen from the vessel and imported into the Customs territory of the U.S. Vessel equipment used as tools for the construction or drilling of the well and which remain with the vessel are exempt from duty because they are not considered imported within the meaning of Section 141.1(a) of the Customs Regulations (Legal Determination 3600-14)

6. A formal entry (including a Temporary Importation Under Bond) is not required for machinery components brought ashore from a mobile drilling rig for re-

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pairs since they are considered vessel equipment which may be landed temporarily and reladen on such rig under Customs supervision without entry as provided for in Section 4.39(c) of the Customs Regulations. (Legal Determination 3600–14)

7. Vessel equipment (including machinery), such as anchor chain, drill stem, and spare parts, brought ashore for storage from a mobile rig engaged in drilling on the contintental shelf may be entered into a Customs bonded warehouse and subsequently withdrawn free of duty for use on the rig, even though the vessel is in the drilling mode at the time of withdrawal. This vessel equipment was brought in by the rig, placed in a bonded warehouse for use by that same vessel for drilling and will be subsequently taken out with that rig when the drilling operation has been completed. (Legal Determination 3600–14)

8. Foreign registered and U.S. registered drilling vessels engaged solely in a drilling operation are not entitled to the duty free withdrawal privileges of Section 309 of the Tariff Act and Section 10.59 of the Customs Regulations because such vessels are not actually engaged in trade between two places. (Legal Deterimination 3600–14)

9. Effective September 18, 1978, foreign-built drilling and production platforms which are not vessels (see Section 3111.15(A)(3)) if permanently or temporarily attached to the seabed of the Outer Continental Shelf, would be considered imported into the Customs territory of the United States and subject to the laws and Customs Regualations resulting from such importation. Foreign-built drilling and production platforms which are not vessels are dutiable upon their attachment, whether temporary or permanent, to the seabed of the Outer Continental Shelf. The platforms are classifiable under 652.98 TSUSA. (C.S.D. 79–1)

I. Coordination with the U.S. Coast Guard

The Coast Guard must be notified when a drilling rig is to be "attached" to the Outer Continental Shelf and when the rig is ready to depart from its drilling location. It is recommended that the district directors obtain the assistance of the Coast Guard, if necessary, in keeping aware of the operation and movement of offshore drilling rigs on the high seas over the Outer Continental Shelf.

Mr. GABLE. The applicability of all our laws on the OCS is difficult for us because we don't have anyone stationed out there inspecting operations to determine whether requirements are always followed.

Mr. TAUZIN. That is my point, the implications of allowing these new operations conducted by foreign flagged and manned warehousing ships in the OCS areas is that your life will get even more complicated in terms of carrying out congressional obligations imposed upon you to collect duties and fees.

You know we don't need more complications. It seems to me we have enough from the testimony earlier, even from Baltimore, you don't have the officials to do inspection and monitor, you are not likely to get more. So I simply suggest that before we permit new phenomena out there through interpretations of the law, that will create more problems for you, that we really ought to think about it more candidly.

It would be helpful if you could perhaps respond in writing as to the current methods by which you go about monitoring and policing the inspection and collection of duties and fees on these wares brought in from foreign sources.

Mr. GABLE. We will.

Mr. TAUZIN. Mr. Chairman, I thank you again for permitting me to participate. I yield back the balance of my time.

Mr. JONES. You are quite welcome.

Mrs. Bentley wishes to be recognized.

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. Banks, I was able to get statistics in here that I didn't have right at my fingertips when I was talking about this before, it was just from my recollection before.

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The number of inspectors at the Port of Baltimore went down from 78 to 44 so that is 34 of the 53 are from Baltimore.

In June of this year, Steny Hoyer, who is the Congressman from the Fifth District of Maryland, and is on the Appropriations Committee, had included in the fiscal year 1986 budget funds for 20 new inspectors for Baltimore to raise the number to 64. Why did Customs say no thanks to that?

Mr. BANKS. I am not aware of that background on this particular issue. However, I would presume that the reason that we were reluctant to do that is because we are trying to institute new procedures and trying to improve our productivity over just increasing our manpower requirements.

Mrs. BENTLEY. How long have you been trying?

Mr. BANKS. This is an evolutionary process, it is not something that is going to happen overnight, but the cargo delays that you talked in terms of are really, they have to be the exceptional case.

Mrs. BENTLEY. They are not exception. This is constant. The Port of Baltimore is getting a very bad image on these delays. It is not exceptional.

Mr. BANKS. I was down in Baltimore about a week ago, I met with our people down there——

Mrs. BENTLEY. Your people. Did you meet with the shippers?

Mr. BANKS. I only met——

Mrs. BENTLEY. Did you meet with the orders and custom house brokers?

Mr. BANKS. Yes, with one broker.

Mrs. BENTLEY. Well, I will call a delegation meeting and have you come and meet with all the people so you find out what is really going on there.

Mr. BANKS. About a year ago I was heavily involved in that process in Baltimore and we did proceed to work out a number of arrangements to expedite the flow of cargo through there and we were working in terms of an 8-hour turnaround time on cargo release documents. That was the typical situation.

Mrs. BENTLEY. Well, your 8 hours isn't working. Are you with the devanning project?

Mr. BANKS. Yes.

Mrs. BENTLEY. Will you explain to the committee here what the devanning project is?

Mr. BANKS. Essentially what we are trying to do is we have in almost every port a multitude of work sites that we have to go out to, that we have to send inspectors out to. These may be scattered all over the city or the port. What we are trying to do is work in cooperation with the port authorities and with the trade community to limit the number of sites where we have to dispatch our inspectors to perform examinations.

We are trying to set it up so that we can operate more efficiently and more effectively not only for ourselves but also for the trade community to reduce their costs by dealing in volume in terms of actual devanning and having to get in and intensively inspect a particular container.

Mrs. BENTLEY. What do you do when you open the container.

Mr. BANKS. It will depend on exactly what the risk is. If the risk is very minor such as we are concerned that the merchandise must

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match the invoices that have been presented to us by the importer, we may go into just a few boxes. We may not go far into the container.

If we have a concern there narcotics or concern that something is being concealed or if there is a bad background on a particular importer, we will devan the entire container and go through everything, 100-percent examination.

Mrs. BENTLEY. Is that the reason why you open every box of shoes in a container?

Mr. BANKS. You know, I can't say that we do examine every box of shoes that comes in the country.

Mrs. BENTLEY. Well, this is part of the criticism going on over there, is the experimental program you are thrusting on Baltimore—we seem to be your test area and as a result we are getting a bad name because of delays being caused by all the experimental programs including the way you are doing devanning right now.

Mr. BANKS. The devanning situation, we have implemented that in a number of ports all around the country, Baltimore is not a particular test site on that. Baltimore was a test site originally to test out our selectivity system very early on.

That was basically a couple of years ago. Most of our other experiments are not being tested in Baltimore.

Mrs. BENTLEY. What are you doing in relation to the requirements of computerization of businesses in the ports dealing with Customs?

Mr. BANKS. There is a great deal of interaction with the trade community on computerization. We are working with port authorities, we are working with ocean carriers, air carriers, custom brokers and importers in order to expedite and automate the manual processes we are now going through.

We have got everything from such things as a system called the automated broker interface where brokers can transmit electronically entry data to us. We have a test program for automated manifests in Norfolk where a carrier transmits the data rather than tender us a sheet or ream of papers that is several inches thick to try to pour through.

We are coordinating most of our efforts. We have steering committees and working committees set up with most elements of the trade community to ensure that we take their concerns into consideration.

Mrs. BENTLEY. Are you being helpful with the port community and telling them what kind of computers will interface with yours so this can proceed?

Mr. BANKS. You raise a particular issue on which there has been some discussion. That has not totally been resolved.

Now our executive staff from Washington and around the country are meeting to discuss that issue, amongst others, in automation. The linkage of the computers between the trade community and Customs is a major concern.

It is not an easy process. It is very complex. We not only have to make sure we provide a quick response to the trade community, but that we maintain the integrity and security of our information, our selectivity information that is in the computer.

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Mrs. BENTLEY. Well, I am just—just, for example, Mr. Chairman, I know this is going on in other ports, the State of Maryland is in the process now of investing $2 million in computer equipment to handle the port Customs activities and the individual companies are all having to buy their own computers and yet if they go ahead and buy the wrong stuff and they can't interact—interface with Customs, this is all money down the tube.

Something must be done to get over this type of obstacle.

Thank you.

Mr. BANKS. Thank you.

Mr. JONES. Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman.

Just a few followup questions.

Mr. Gable, I notice that the Customs agency has some authority to grant waivers in some cases. Does your agency have any authority to grant a waiver from the application of the Jones Act or any portion of it in the OCS?

Mr. GABLE. Yes. We would if we can make a finding that it is in the interests of national defense.

Mr. TAUZIN. So that if indeed your agency were to rule that in this particular case in Alaska that there was a necessity for this foreign wares ship service for many of the reasons cited by Amoco; and that recovering or discovering resources in that area was important for our national defense, that your agency could, in fact, grant a waiver?

Mr. GABLE. We could, yes.

Mr. TAUZIN. Finally, sir, in the conference report when the OCS Lands Act was adopted there is clearly a provision that says that the United States manning and crewing requirements would not apply to foreign offshore vessels and structures. But it goes on to say then if the President makes a determination that the foreign nation where the vessel was built is flagged, directly or indirectly by statute, regulation, policy, or practice has adopted a national manning requirement for equipping in its offshore waters, the President can apply the American crewing provisions and manning requirements to the offshore vessel.

The obvious meaning of all that is that in regard to our reciprocal relationships with foreign countries, if we can look into what they are doing in their OCS and if they have requirements on their own vessels there, we can apply the same requirements on vessels operating in our OCS.

Has any attempt been made to determine what are the laws and regulations or practices in the OCS of the nation of origin of the cruise ship involved in the Amoco application?

Mr. GABLE. Not to my knowledge. I believe that would be done by the U.S. Coast Guard which has that responsibility, not the Customs Service. But I can find out and let you know.

[The following was received:]

REQUIREMENTS FOR OCS VESSELS

Reference was made to House Conference Report No. 95-1474, dated August 10, 1978. On page 125 of that Report there is a discussion of the provision of the Outer Continental Shelf Lands Act relating to exceptions from manning requirements (43 U.S.C. 1356(c)(2)). This is a matter under the jurisdiction of the U.S. Coast Guard. It

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is covered by section 141.5(b)(3) of the Coast Guard Regulations (33 C.F.R. 141.5(b)(3)). I understand from Coast Guard Headquarters that the President has not be requested to determine that the government of any foreign nation or any of its political subdivisions has implemented a national manning requirement for equipment engaged in the exploration, development, or production of oil or gas in its offshore areas. I understand that this is because Coast Guard will only act on complaints and none have been received. However, I don't presume to speak for Coast Guard. I understand further information can be obtained from Lieut. Sean Connaughton, Merchant Vessel Personnel Division, Office of Merchant Marine Safety, U.S. Coast Guard (G-MVP) 2100 Second Street, SW., Washington, DC 20590.

Mr. TAUZIN. I think it would be interesting. Perhaps if your office could make an inquiry to see whether or not there is any applicability of the language, obviously, which expresses congressional intent for reciprocity in terms of the treatment of those vessels and structures within our own OCS.

Mr. TAUZIN. Thank you, Mr. Chairman. I appreciate your indulgence again.

Mr. JONES. If there are no further questions—Mrs. Bentley.

Mrs. BENTLEY. Thank you, Mr. Chairman.

I have one other thought that occurred to me in relation to the confidentiality of the reports Mr. Banks was talking about.

What part of the reports do you consider confidential?

The reason I ask is that we can pick up publicly indications every week, the Journal of Commerce, for example, and others, and find out all kinds of information regarding imports that have come into the United States and they are—this information is obtained from Customs' documents.

What is it that you are trying to keep so confidential that you can't relate to the State computer systems, for example?

Mr. BANKS. There is a statute that provides that an importer can request confidentiality in terms of both their name and their address for shipments coming into this country.

Mrs. BENTLEY. So it would be the name but not the product?

Mr. BANKS. Not the product, no, ma'am. Beyond that, there are a multitude of things that we have to assure confidentiality of, business information such as pricing and that type of thing, competitive contracts, et cetera.

But the main issue with port authorities is just the name and the address of the particular importers.

Mrs. BENTLEY. Are the competitive contracts on the documents that come in?

Mr. BANKS. Those are on the invoice documents, not on the manifest documents. Most of the information the port authorities are concerned with is the information on the manifest.

Mrs. BENTLEY. Thank you. I wanted that on the record, Mr. Chairman. Thank you.

Mr. JONES. I want to thank both you gentlemen for your appearance this morning. I assure you that the whole purpose of this oversight hearing is to get a little closer relationship between this committee and your department and if possible a more pleasant working arrangement and we will do our part and I rather sense that you will, too.

Thank you very much for being here.

Mr. GABLE. Thank you very much for having us, Mr. Chairman.

Mr. BANKS. Thank you, Mr. Chairman.

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Mr. JONES. Our next witnesses are a panel, Mr. Robert Crandall, executive director, Western States Coalition for Effective U.S. Customs Service; Mr. Hal Schuyler, president of the Puget Sound Steamship Operators Association; and Michael Dugan, National Customs Brokers & Forwarders Association of America.

We have a number of witnesses and if possible if you could present your testimony in condensed form, confine it to 5 minutes with assurances that your full statement will be included in the record, the Chair and the committee would be grateful for that.

So it is so ordered without objection that we confine each of the witnesses to approximately 5 minutes of testimony and hopefully about the same for questions.

Who will speak first? Mr. Schuyler.

STATEMENTS OF ROBERT CRANDALL, EXECUTIVE DIRECTOR, WESTERN STATES COALITION FOR EFFECTIVE U.S. CUSTOMS SERVICE; HAL SCHUYLER, PRESIDENT OF THE PUGET SOUND STEAMSHIP OPERATORS ASSOCIATION; AND MICHAEL DUGAN, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA

STATEMENT OF HAL SCHUYLER

Mr. SCHUYLER. Good morning, Mr. Chairman, and your fellow members, I am representing the Puget Sound Steamship Operators Association, which I am president of.

In view of your request for holding down the testimony, maybe I better just read the last part of my testimony. I just got into town last night but we will have copies of this by noon up here from the printsh' p.

Mr. JONES. All right.

Mr. SCHUYLER. We do explain the problems that the Customs Service is having on the coast and these are related to Seattle and, of course, to the whole Pacific coast.

I will start over in the middle of the testimony. Additional projects that are on the Customs Service' agenda include a program called Accept with considerable merit in assisting Customs and the shipping public in processing paperwork through use of computerized inputs of a ship's cargo manifest.

This program was developed by Customs with cooperation of the steamship companies. Then there is the Exodus Program, requested by the Defense Department to the Commerce Department for Customs to implement.

Then they have their drug programs. There are many of these programs all of which require staff for the work. The Heathrow Program, project to keep tabs on suspect terrorists.

Then commodity quotas, another area that increases the Service workload. It was established for U.S. import commodities.

This project must be kept up to date in order for Customs to carefully monitor and report on a frequent schedule. I would like to note that Customs works on a 5-day per week basis during a 6-day period, nights and Sundays are overtime rates charged to those requiring their services.

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Further, Customs personnel are limited to the amount of dollars each inspector may earn and overtime paid per year. This limits this capability of the Service.

The reason for citing the duties of the workweek regulations of the Service is to underscore it. All these projects and programs are important to the Nation.

We understand that the Customs Service is charged with upholding some 10,000 rules and regulations for 40-some different departments of Government.

The number of inspectors import specialists and clerks has decreased when it should have increased to handle the volume of workload. The Government is hindering the ability of the Customs Service to do the job they were charted to do because of budgeting practices.

Since the Customs Service is not hiring any new staff inspectors and cargo specialist level staff, they are moved to work on special projects or on computers. Jobs that could be handled by lower level clerks.

The heavy work load and overtime requests and added programs are certainly not conducive to speed or efficiency or to healthy work morale for the public service.

Clearly staffing and other administrative changes fall within the purview of the Customs Service but decisions affecting the integrity of the international transportation network are crucial to the well-being of the Nation's foreign trade and go right to the heart of America's economic security.

Decisions of this magnitude should evolve from an open dialog between the parties concerned not unilaterally executive fiat. The U.S. Treasury has been pound foolish and penny wise, to use an old saying.

Their revenues could be greater with more cargo specialists and inspectors. Going back into history, nations' leaders set up a custom service to collect revenues as well as control the imports and exports into their countries. The service was designed to pay for itself as well as return a profit to the Treasury.

We would like to go on record in the fact that there should not be a surcharge or users' fees assessed the cargo or steamship company. Again, if there were more cargo specialists and inspectors on the west coast, the U.S. Government revenues would exceed those being collected today.

In no way are we here to criticize the U.S. Customs Service of the Pacific region on any district. The Service needs help to perform its duties efficiently.

It is evident that this help must come from Congress in the form of rational operating budget and not trying to adopt a user's fee.

Thank you.

[The statement of Mr. Schuyler follows:]

STATEMENT OF HAROLD L. SCHUYLER, PRESIDENT, PUGET SOUND STEAMSHIP OPERATORS ASSOCIATIONS

My name is Harold L. Schuyler.

Today, I am giving testimony on behalf of the Puget Sound Steamship Operators Association, of which I am president. The Association represents 32 steamship operators and agents in the Pacific Northwest area.

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I am also Director of Public Affairs for the Alaska Division of the U.S.-flag containership carrier Sea-Land Service, Inc., a member of the Association and a major carrier in the area. I have been associated with Sea-Land for more than 19 years.

The Association and the shipping industry wishes to thank you in advance for permitting us, as members of the shipping community, to testify regarding the problems we face with the present shortage of U.S. Customs inspectors and the impact of anticipated further reductions in staff on our West Coast steamship operations.

We are concerned that any Customs reorganization or staff reduction that is not fully thought out and discussed will not only inhibit intermodal growth, but will increase transportation costs—costs that will ultimately be borne by the consumer.

Further, we believe a shortage of Customs inspectors on the West Coast will: one, frustrate our nation's foreign trade objectives; two, reduce the competitiveness of U.S. imports and exports alike; and three, threaten the integrity of the entire U.S. transportation network.

Because of the increased workload at Pacific Coast ports brought about by the rapid growth of international commerce, particularly between the U.S. and Pacific countries, the Customs Service is having a difficult time in keeping up with import/export traffic. In fact, its staff has decreased as its work has increased.

Briefly, I would like to give you an idea of how steamship operators work and how crucial an efficient Customs Service is to our operations.

Today, speed and efficiency are the cornerstones of any successful, cost-effective intermodal service—both from the point of view of the customer and the steamship operator.

The basic advantage of containerization to the steamship operator is productivity—substantially reducing the time and labor costs in transporting goods. Any delays due to Customs congestion inhibit this productivity, increase costs and reduce profitability.

Before a vessel even arrives at a port, a steamship company employs a computer simulation to plan the orderly disposition of cargo. To expedite cargo routing, extra labor is scheduled to handle vessel discharge operations, and both contract longshore and full-time office workers coordinate operational plans and documentation so that the containers coming off a ship are placed in the proper parking slots for immediate Customs clearance. After Customs clearance, the cargo must meet the scheduled departure of the connecting land carrier—whether it be truck or rail. Other modes of transportation heavily depend upon the schedule of vessel operators and Customs to clear cargo through port areas.

If, for example, there is congestion in Customs and a shipment misses a scheduled unit train departure, a delivery delay of as much as a week could result. In that case, the steamship operator has incurred substantial labor expense in an unsuccessful attempt to speed cargo distribution. Cargo which does not move must be stored by the steamship operator, and this storage becomes yet another expense to the customer or cargo.

To lower expensive warehousing costs, many of our customers are turning to "just in time" or "zero inventory" production timetables. Because inventory stocks are kept to a minimum, production and distribution hinge on timely cargo delivery. Late arrivals due to Customs back-ups create costly production, distribution and sales delays for our customers.

Further, any delay in cargo movement is costly not only to our customers but to all modes of transportation. Each mode in an intermodal operation must strive to stay on schedule to make the network efficient.

Notably, there has been a dramatic increase in intermodal rail shipments over West Coast ports. Just to give you an idea of volume increases in rail traffic, my Company alone moved an average of 3,000 containers each week across the U.S. in 1984, compared with fewer than 100 containers a decade ago, from and to the West Coast.

In the last seven years, the total tonnage moving through the Seattle District has increased 86 percent. Total Customs duties collected have increased 193 percent. And total cargo entries, that is the number of shipments clearing Customs, have increased 135 percent. I am sorry that I do not have these same statistics for the Los Angeles District, but I understand they show a larger discrepancy.

Not only has there been no commensurate increase in Customs staff to handle this markedly increased volume, but the number of Inspectors, Import Specialist and Clerks has actually decreased. This fact is true up and down the West Coast, and quite serious in the Los Angeles District as well as Seattle.

Each Customs District along the West Coast is charged with the following responsibilities:

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All marine traffic, commercial and pleasure craft, that indulges in foreign movements of cargo and passengers.

Aircraft traffic at the many airports, commercially and private for cargo and passengers.

All border crossings between the U.S. and Canada and the U.S. and Mexico, i.e. Washington State and Canada as well as between California/Arizona and Mexico.

Additional projects that are on the Customs Service agenda include:

Accept program.—A program which has considerable merit in assisting Customs and the shipping public in processing paperwork through use of computerized input of a ship's cargo manifest. This program was developed by Customs with the cooperation of the steamship companies.

Exodus program.—Request by the Defense Department to the Commerce Department for the Customs Service to implement.

Drug programs.—There are many of these programs, all of which require staff to perform the job.

Heathrow program.—A project to keep tabs on the whereabouts of suspect terrorist types.

Commodity quotas.—Another area which has increased the Service workload is the various quotas established for certain U.S. import commodities. This project must be kept up-to-date in order for Customs to carefully monitor and report on a frequent schedule.

I would like to note that Customs Service works on a 5-day per week basis during a 6-day period. Nights and Sundays are at overtime rates charged to those requiring their services. Further, Customs personnel are limited to the amount of dollars each inspector may earn in overtime pay per year, thus limiting this capability to the public.

The reason for citing the duties and the work week regulations of the Customs Service is to underscore that:

All of these projects and programs are important to the Nation. We understand that the Customs Service is charged with upholding some 10,000 rules and regulations for 40 some different Departments of the Government.

The number of Inspectors, Import Specialists and Clerks has decreased when it should have increased to handle the extra volume and workload.

The Government is actually hindering the ability of the Customs Service to do the job they were chartered to do because of budgeting practices.

Since the Customs Service is not hiring any new staff, Inspector- and Cargo Specialist-level staff are frequently moved to work on special projects or on computers—jobs that could be handled by lower-level clerks.

The heavy workload, the overtime requests and the added programs I mentioned earlier, without extra staff, are certainly not conducive either to speed and efficiency or to healthy work morale for a public service.

Clearly, staffing and other administrative changes fall within the purview of the Customs Service. But decisions affecting the integrity of the international transportation network are crucial to the well-being of our Nation's foreign trade and go right to the heart of America's economic security. Decisions of this magnitude should evolve from an open dialogue between the parties concerned, not unilateral executive fiat.

Presently, the Seattle District has been allowed to increase their numbers to 20 above the present roll and the Los Angeles District has been allowed to increase their number to 60 above the present roll. This is only the first step to cover the end of the 1985 Fiscal Year. Members of Congress have been working to improve these figures even more for the 1986 Fiscal Year. Thanks to the cooperation of Congressman Roybal, Chairman of the Subcommittee on Treasury, Postal Service and General Government in the Committee on Appropriations, United States House of Representatives, who has listened to the people in Industry. To name a few steamship operators, shippers, consignees, Custom House Brokers, freight forwarders and labor, which plays a roll with the day-to-day operations with Customs.

The U.S. Treasury Department has been "pound foolish and penny wise" to use an old saying. Their revenues could be greater with more Cargo Specialists and Inspectors. Going back into history, ruling leaders set up a Customs Service to collect revenues as well as to control the imports/exports into their countries. The "Service" was designed to pay for itself as well as to return a profit to the Treasury. We would definitely like to go on record in the fact that there should not be a Surcharge or Users Fee assessed to the cargo or steamship company. Again, if there were more Cargo Specialists and inspectors on the West Coast, the U.S. Government's revenues would exceed those being collected today.

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In no way are we here to criticize the United States Customs Service or the Pacific Region or any District. The Customs Service needs help in order to perform its duties efficiently. It is evident that this help must come from Congress in the form of a rational operating budget and not trying to adopt a "Users Fee."
Thank you.

Mr. JONES. Thank you, Mr. Schuyler.
Our next witness is Mr. Crandall.

STATEMENT OF ROBERT W. CRANDALL

Mr. CRANDALL. Thank you very much, Mr. Chairman. I appreciate this opportunity to present testimony at the hearing today.

I am representing a newly formed coalition called the Western States Coalition for Effective U.S. Customs Service.

The Pacific coast ports have come together in this unified effort to work toward improved Customs Service at Pacific coast ports because of the serious concern we have over the Customs clearance procedure problems and delays of clearing cargo. Although ports are very competitive, we have set aside competitive considerations, in this instance, to work together in this coalition for the common benefit of all Pacific coast ports.

We feel this organized effort is essential for Pacific coast ports and also for the shipping interests of the international trade community. We also believe this organized effort is necessary because of the natural geographic advantages of our Pacific coast ports as a result of recent structural changes in water and rail transportation technology and international trade movements.

Since the late 1970's, there has been a dramatic shift in movement of cargo in and out of the United States. In 1980, for the first time the value of international commerce moving between Pacific RIM nations and the United States exceeded the value of international commerce between Western European nations and the United States and this trend is forecasted to increase.

In 1984, there was a $130 billion value of cargo between the United States and the European nations and in the Pacific RIM area it was nearly $170 billion. From 1971 to 1984, trade through Pacific coast ports increased 273 percent. That is an annual compound growth rate of 8.1 percent. If that compound growth rate were to continue, by the year 2000 we would have 3½ times as much cargo. By the year 2000, it would nearly double if it continued at one-half the rate from 1971 to 1984.

Containerized cargo movements from 1971 to 1984 increased 554 percent. That is an annual compound growth rate of 17 percent. If it was just a 5-percent growth rate, containerized cargo would double by the year 2000. If it continues even at half the rate it has been at 17 percent it would quadruple by the year 2000. The point we are making is, that because of the structural changes in cargo flows, the type of ships, intermodal activities, double-stack trains, we are seeing a vast increase in cargo coming through Pacific coast ports.

Our basic concern is that the Customs Service inspection capabilities are not keeping pace with the vast increase in cargo flowing through the ports of the Pacific coast. We are just going to have to work together to see that we eliminate these delays in cargo clearances.

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It is disrupting commerce, affecting shippers, affecting the whole international trade community. The point is, that the Western States Coalition has worked together for all Pacific coast ports, to see that we reach our objective in this.

One thing has been said about automation today and we want to work very closely with the Customs on automation procedures. But while Customs says automation will improve productivity, the question is, When will they? We know a lot has been done. We are aware of that. But if they keep cutting down on the number of inspectors while they are trying to implement all the automation procedures, all we are having is disruption and delay.

In the 1984 annual report of the Custom Service, there were three instances by Commissioner Von Raab of how they have revamped their automation system. It is what Congressman Bentley brought out about the compatibility of computers of Customs with the international trade community. Customs doesn't have an established procedure for automation and so it is not only the costs involved, but delays because they don't have the automation procedures in place.

As Mr. Banks said, the number of inspectors has been stagnant. While the cargo has increased there are actually less Customs inspections on the Pacific coast Let's keep the cargo flowing while the automation is implemented.

We have to take care of today's situation or there won't be a tomorrow in Pacific coast ports if we don't have the right situation today.

The Coalition has determined that we need 150 more Customs inspectors in the Los Angeles district, the San Francisco Customs District needs 64; and the Seattle Customs District needs 66. This is the declared position of the Western States Coalition, that that is what we need.

We can point out disparities that I think are very important here. For every dollar appropriated in the Customs budget, U.S. Customs collect $21 in Customs revenue. In San Francisco for every dollar appropriated, Customs collect $55. In Los Angeles, the ratio is $1 to $100. I think that is a clear indication that there is a disparity in the number of inspectors and cargo clearance personnel on the west coast versus other ports areas.

I have a few other statistics that show this. In formal entries in Los Angeles District there is a workload of 1,653 formal entries per inspector and import specialist. Nationwide that ratio is 1,218.

In data that Mr. D'Angeles gave in another hearing that I have, in 1980 the ratio of formal entries to Customs inspectors was 812 nationwide. In 1985, it is forecast to increase to 1,264, a 56-percent increase.

Even with automation, you can see that things are not proceeding as well as they should. In Los Angeles there is 1,653 formal entries per inspector versus the national average of 1,218. That is demonstrative of the disparity. In Los Angeles, San Francisco, and Seattle, those three districts collected 27 percent of all U.S. Customs collections with 8.7 percent of Customs staff. That is a 3.1-to-1 ratio of Customs collections to Customs staff. That shows the disparity we have on the west coast. We have a situation in Oakland especially that because of the lack of inspectors, the District Direc-

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tor informed our port management that they would discontinue any Custom inspectors at Oakland International Airport.

It forced the Military Airlift Command to cease bringing in international flights to Oakland, eliminated expansion of international flights and the Military Airlift Command told us in a written confirmation that this increased their costs to have to move their aircraft through San Francisco Airport in the amount of $360,000 annually.

Oakland just can't have even an opportunity to expand our airport activity and I think there are some indications that San Francisco has a great burden of international flights and it would be helpful to spread that around. So there is a very specific situation. Then we had a situation where within our region they sent a letter to our District Director asking for voluntary transfers from our district to the L.A. district.

Now, we want to see that all the districts in the Pacific region have the right number of inspectors but we don't like Customs coming to our district to try to even the work flow in the region which then becomes a burden to our district.

So these are the concerns we have of the Western States Coalition for effective U.S. Customs Service. We will expand our effort and bring in everybody to see that we get the inspectors we need.

And we want to say again how much we appreciate this opportunity to appear in this hearing and specifically talk about what is being addressed.

[The statement of Mr. Crandall follows:]

STATEMENT OF ROBERT W. CRANDALL, GENERAL MANAGER, MARINE TERMINALS DEPARTMENT, PORT OF OAKLAND

My name is Robert W. Crandall. I am General Manager of the Marine Terminals Department of the Port of Oakland with assignments and responsibilities directly related to the development, marketing and coordination of marine terminal facilities. Consequently I am vitally concerned with the efficient movement of cargo and any negative consequences that may result to water carriers, shippers, marine terminals and other entities involved with International trade. I have been in the transportation industry over 30 years and with the Port of Oakland nearly 20 years and have gained an understanding of the need for efficient and expeditious movement of cargo.

BACKGROUND

I am appearing before this committed today on behalf of the Western States Coalition for Effective U.S. Customs Service. This is a newly formed effort organized by the seven major Pacific Coast ports handling containerized cargo—Los Angeles, Long Beach, Oakland, Portland, San Francisco, Seattle and Tacoma. Representatives form these ports presently from the Executive Committee with the responsibility of directing and coordinating the Policy and Goals of the Coalition. James J. O'Brien, Deputy Executive Director of the Port of Oakland, is Chairman of the Coalition and I serve with him as Executive Director. From among the Coalition's comprehensive objectives, this newly formed organization's first priority is specifically to have effective U.S. Customs service cargo clearance services as well as other government inspection organizations.

The Pacific Coast ports have a very serious concern over the short term and long term implications of inadequate facilitation of U.S. Customs Service cargo clearance and inspection services at our Pacific Coast ports. Although these ports are traditionally very competitive, we have agreed to set aside competitive considerations in this instance and to work together in this Coalition for the common benefit and need of all Pacific Coast ports.

We assert this organized effort is essential for the Pacific Coast ports and equally, and perhaps even more fundamentally essential or all interests involved with inter-

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national trade who desire to use Pacific Coast port facilities. We also say this organized effort is necessary because of the natural geographic advantages of our Pacific Coast ports as a result of recent structural changes in water and rail transportation technology and international trade movements. This will be elaborated on further.

The full text of the Coalition's Policy Statement is attached (See Exhibit #1)

In summary it states:

1. Differences in Customs facilitation capabilities (and other inspection services) among ports should not become a competitive issue.

2. Each port can seek to ensure adequate facilitation services buy not in a manner detrimental to other West Coast ports.

3. The Coalition seeks the broadest membership base possible of all interests involved with international trade.

4. The Coalition desires to achieve its objectives through a constructive dialogue with the U.S. Customs Service at the local, regional and national level and believes the interests of the membership and the U.S. Customs Service can best mutually be served through open communication and cooperation. We also we seek the same constructive dealogue and cooperation from other government inspection agencies.

The full text of the Coalition's Statement of Goals is attached (See Exhibit #2), but in summary states:

1. To secure and maintain a level of Customs facilitation (and other inspection services) adequate to support the needs of all West Coast ports.

2. To ensure that present and future staffing of inspectors and support personnel at all West Coast ports is reflective of the significant role that the West Coast plays in United States foreign trade and its growing role relative to other coastal ranges.

3. We recognize the need for automation of inspection services and will actively cooperate with their implementation, but we declare this must be done to avoid cargo dislocations among ports and in an orderly manner that will maintain the efficient flow of cargo.

4. To cooperate with the customs broker community to carry forward cooperative facilitation programs.

5. To work toward procedures which will facilitate the needs of the rapidly changing intermodal transportation system while recognizing the enforcement responsibilities of the U.S. Customs Service.

6. To ensure that West Coast ports have meaningful imput to the U.S. Customs Service decision making process concerning staffing and administering U.S. Customs Service enforcement and trade facilitation responsibilities.

7. To ensure to the greatest extent possible uniform application of U.S. Customs Service procedures at all West Coast ports through a regional organizational structure overseeing the activities of the West Coast Customs District.

IMPORTANCE OF PACIFIC COAST PORTS IN TOTAL U.S. INTERNATIONAL TRADE

There is ample evidence that the Pacific Coast ports are in a unique position in relation to the international trade flow and commerce of the United States.

Since the late 1970's, the Pacific Rim nations have surpassed the Common Market countries as U.S. trading partners. In 1980, for the first time, the value of international commerce moving between Pacific Rim nations and the United States exceeded the value of international commerce between Western European nations and the United States and this trend is forecasted to increase. The value of trade in 1984 between the U.S. and Western European nations was $129.9 billion while the value of trade between the U.S. and Pacific Rim nations was $167.4 billion. (See Exhibit #3)

In 1971, the West Coast share of total U.S. Liner foreign trade exports to the Far East area in short tons was 41% of the total or in actual tons 1,956,000 short tons. By 1984, the percentage share had increased to 73.8% through the West Coast ports and tonnage was 8,775,000 short tons (See Exhibit #4).

Liner imports from the Far East area through West Coast ports in short tons in 1971 was 38.4% of total U.S. imports from the Far East or 2,653,000 short tons. By 1984, the West Coast share had increased to 69.3% of total U.S. imports from the Far East or 8,446,000 short tons (See Exhibit #4).

There has also been a significant shift in the West Coast market share of South East Asia Cargo as is shown in Exhibit #4.

In the 13-year period from 1971 to 1984, the West Coast share of total U.S. waterborne liner exports worldwide increased from 18.8 percent to 36.9 percent. Over this same 13-year period, exports in absolute tonnage amounts moving through West Coast seaports increased 8.5 million short tons from 4.8 million short tons in 1971 to 13.1 million short tons in 1984.

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Imports worldwide through West Coast ports increased 7.8 million short tons—from 4.6 million short tons in 1971 to 12.4 million short tons in 1984 and the West Coast percentage share increased from 18.9% of total worldwide imports in 1971 to 33.6% in 1984.

During this same time period (1971 to 1984), the West Coast share of total U.S. waterborne liner trade (exports and imports) occurred during a timeframe when total international liner waterborne trade moving through West Coast seaports increased from 9.2 million short tons in 1971 to 25.5 million short tons in 1984.

Total international liner cargo imports and exports worldwide through Pacific Coast seaports from 1971 to 1984 has increased 273 percent or an annual compound growth rate of 8.1%. If U.S. Liner foreign trade tonnage through the Pacific Coast ports were to grow at the same rate it has since 1971, by the year 2,000 the tonnage would have increased from 25.5 million short tons in 1984 to 88.1 million short tons in the year 2,000. If the growth rate were only half the historical rate, U.S. Liner foreign trade tonnage would be 47.8 million short tons by the year 2,000 or nearly double the present tonnage.

Cargo statistics dramatically confirm the growing importance of the entire Pacific Basin countries to the West Coast ports. In 1984, the Pacific Basin countries total liner trade exports through West Coast ports in short tons was 84.9% of the total of all world trade while Europe represented only 6.9% of total exports in 1984. Total liner trade imports in short tons through West Coast ports from Pacific Basin countries was 79.3% of the total while Europe was only 11.3%. Dollar value of liner trade exports and imports show the same importance. (See Exhibits #5, #6, #7, and #8.)

Containerized cargo growth through West Coast ports from 1971 to 1984 has increased 554% or a compound annual rate of increase of 17%. (See Exhibit #9.) At a 5% growth rate, containerized cargo will double by the year 2,000 and quadruple by 2,000 if growth is only half the historical growth rate from 1971 to 1984.

THE NEED FOR ADDITIONAL CUSTOMS INSPECTION PERSONNEL

Using the preceeding information on the growth of cargo through Pacific Coast ports and the projected growth in the future, we now come to the focal point of our presentation. Our basic concern is that U.S. Customs Service inspection capabilities have not kept pace with the level of cargo activity through Pacific Coast ports. Information and statistics available on U.S. Customs Service staffing shows that the level of personnel available for inspection services has stayed the same or has actually declined during the same time frame that imports have increased dramatically through the Pacific Coast ports.

Because of the shortage of Customs service inspection personnel, there have been many serious and continuing delays in Customs clearance of cargo at U.S. Pacific Coast ports that has negatively and seriously affected many importers. These delays in Customs clearance of import cargo has cost shippers thousands of dollars in unnecessary demurrage fees, disruption to the normal and necessary flow of their commerce and loss of sales revenue because merchandise was not available at point of purchase.

In addition, the desired flexibility of import cargo clearance procedures and activities from the view point of commerical service and competitive considerations of water carriers, port and marine terminal operators, freight transfer station operators, rail and truck transportation companies, customs brokers and shippers have been severely restricted in the face of the continued cutback in the number of Customs inspectors available.

The Coalition recognizes that the mission of the U.S. Customs Service includes many important responsibilities in addition to the "Inspection and Control" functions. The Coalition specifically recognizes the mission of the U.S. Customs Service in regard to "Enforcement" and express the Coalition's desire to cooperate with the U.S. Customs Service in this significant responsibility. The Coalition suggests that the additional "Inspection and Control" personnel required at Pacific Coast ports to adequately facilitate cargo clearance will assist the U.S. Customs Service in their "Enforcement" mission because of the increased visability and presence of Customs inspectors.

COALITION VIEWPOINT ON AUTOMATION

The Coalition has stated forthrightly in our Statements of Policy and Goals that we view automation of clearance procedures as a desirable development. Efforts to improve inspection services through automation and decrease inspection costs in every practical way including a reduction in the number of personnel required are

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all desirable fundamental aspects of the competitive environment we as a nation face.

The Coalition strongly asserts that automation be recognized as a necessary adjunct, but not a replacement for adequate staffing of Customs activities. We maintain the need for a declared policy of an orderly implementation of automation procedures with a minimum disruption of import cargo clearance and other U.S. Customs Service activities.

COALITION CONCERN OF CUSTOMS PROCEDURES

The Coalition is also concerned with several other aspects of the U.S. Customs Service activities. One of these is the so-called Automated Commercial System (ACS) and specifically regarding ports acting as "Service Centers." We believe there is a need for a clarification of what is the benefit for ports being "Service Centers." To date, this has not been clearly defined by the U.S. Customs Service headquarters.

Another serious concern is the need for better communication with Customs to avoid implementation of procedures without adequate notice and the need for better coordination with water carriers, ports, marine terminal operators, transportation companies, customs brokers and shippers. A specific example was the U.S. Customs Service plan to require inspection of all import containers of textiles at port of arrival regardless of the negative economic impact on the international business community and disruption to the intermodal transportation system. This plan announced on July 13, 1984 without any pre-warning and to be implemented by September 7, 1984 threw the West Coast ports and transportation companies serving them, into a state of turmoil. Textiles are a principal import commodity through West Coast ports. Only after a major concentrated effort by these interests was the planned program substantively modified.

This example is cited only to demonstrate that advance communication between U.S. Customs and the affected shipping lines, including the major American flag carriers in the Pacific, might well have resulted in accomplishing the goal in a much more orderly and less disruptive fashion.

U.S. CUSTOMS INSPECTION PERSONNEL REQUIRED AND JUSTIFICATION

We support the staffing allocations for the West Coast ports approved by the House Appropriations Subcommittee which are:

Official reversal of Customs headquarters suggested manning cuts of 887 staff in FY 86.

Assurance that 90 of the original 150 staff positions requested in the 1985 supplemental appropriations bill will be assigned to the Los Angeles Customs District (50); the San Diego Customs District (20); the Seattle Customs District (20) and be carried over into the FY 86 budget.

A request that of the additional 250 (approximately) personnel slots to be added to the U.S. Customs Service in FY 86, that the following be assigned to the Los Angeles, San Diego and Seattle Customs Districts. The summary includes the additional personnel approved by the House Appropriations Subcommittee for the FY 85 supplemental appropriations.

	Fiscal year—		Total
	1986	1985 supplemental	
Los Angeles	100	50	150
San Diego	20	20	40
Seattle	40	20	60

The West Coast ports have made a specific determination of the required addition to the present U.S. Customs Service inspection personnel necessary for clearance of import cargo.

In addition to the specific requests already officially declared as required for the Los Angeles Customs District (150) and the Seattle Customs District (66), there is a requirement of the San Francisco Customs District for a total of 64 inspectors, clerical personnel and import specialists from the unallocated positions included in the FY 86 Appropriations bill.

The Coalition seeks no more personnel than is needed to efficiently handle the clearance of cargo. On the otherhand, the Coalition feels it is unacceptable to have less than the number of personnel needed particularly when officially published

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data of the U.S. Customs Service states that in 1984 for every dollar appropriated on Customs service activities, there was a return of $21.06 in Customs revenue. It is revealing to note that the figure for 1983 was $17.01 and the increase in that one year from 1983 to 1984 was nearly 24%.

This seems to confirm the relation to the increasing volume of cargo and the relative stagnation and actual decline in some districts of total Customs inspection personnel within the Pacific Region. These figures quoted above are the national average. For the Los Angeles and San Francisco Custom District, the relation to appropriation and return is much higher—Los Angeles is estimated to be $100.00 and San Francisco is $55.00.

U.S. Cusoms is a major revenue producer. Pacific Region Customs revenue, which amounted to $2.1 billion in 1980, increased to $3.7 billion by 1984, an increase of 76%.

The Coalition recommends that the government's accounting system should be analyzed and updated to reflect positively what is required to facilitate the flow of international commerce. When Customs inspectors perform special services, overtime services, and out of area service, then clearly private operators benefit from these services, some of which are required for the efficient flow of commerce. But even when the private operators willingly and totally reimburse the government for these extra cost, the current accounting system does not permit credit to U.S. Customs Service budget for this reimbursed payment.

The public and private funds invested in U.S. Pacific Coast seaports and international airports in providing terminal facilities and to facilitate the movement of cargo and passengers amount to many billion dollars. The deterioration of Customs service adversely affects the viability of these investments. The Coalition strongly asserts the necessity of effective U.S. Customs Service to protect these investments.

SUMMARY

The Coalition appreciates this opportunity to present our serious concern regarding Customs facilitation of cargo.

We wish to emphasize in conclusion several points:

1. The Coalition is a united endeavor of Pacific Coast seaports and international airports to unify our efforts for the mutual benefit of all Pacific Coast seaports and international airports with the goal to have effective Customs Service.
2. The Coalition's declared policy is to eliminate differences in facilitation levels as a competitive factor among West Coast seaports and international airports.
3. International Commerce flowing through the Pacific Coast seaports and international airports is growing significantly and all research studies clearly confirm this reality.
4. The Coalition seeks to ensure adequate Customs staffing at all Pacific Coast seaports and international airports.
5. The Coalition desires to cooperate with the U.S. Customs Service in the implementation of automated inspection systems.
6. The Coalition desires to achieve its objective through a constructive dialogue with the U.S. Customs Service at the local, regional and national level.

[Attachments to statement follow:]

[Exhibit No. 1]

WESTERN STATES COALITION FOR EFFECTIVE U.S. CUSTOMS SERVICE

POLICY STATEMENT

The members of the Coalition believe that differences in Customs facilitation capabilities (and other inspection services) among ports should not become a competitive issue among the U.S. West Coast ports. Each member of the Coalition supports the concept of the necessity for a satisfactory level of Customs facilitation at all West Coast ports. a less than satisfactory level of facilitation at any West Coast port is unacceptable to the members of the Coalition.

While each member of the Coalition appropriately reserves the right to carry forward its own program to ensure adequate facilitation services in its own local area, such programs will be designed and implemented in a manner which will not be detrimental to the interests of any other West Coast port.

While the Executive Committee of the Coalition consists solely of West Coast public port authorities, the members recognize the desirability of having the broadest membership base possible of public and private sector interests and welcomes participation of all interested parties including but not limited to shipping lines, air-

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lines, terminal operators, inland transportation companies, customs brokers, importers, and exporters.

The Coalition desires to achieve its objectives through a constructive dialogue with the U.S. Customs Service at the local, regional and national level and believes the interests of the membership and the U.S. Customs Service can best mutually be served through open communication and cooperation.

[Exhibit No. 2]

WESTERN STATES COALITION FOR EFFECTIVE U.S. CUSTOMS SERVICE

STATEMENT OF GOALS

1. To secure and maintain a level of Customs facilitation (and other inspection services) adequate to support the needs of all West Coast ports.
2. To eliminate differences in facilitation levels as a potential competitive factor among West Coast ports.
3. To ensure increased Customs staffing provided for one West Coast District is not provided at the expense of another West Coast District.
4. To ensure that present and future staffing of inspectors and support personnel at all West Coast ports is reflective of the significant role that the West Coast plays in United States foreign trade and its growing role relative to other coastal ranges.
5. To achieve a level of automation of inspection services capable of handling current and future trade volumes implemented in an orderly manner and designed to facilitate efficient cargo flows.
6. To cooperate with the U.S. Customs Service in the implementation of automated inspection systems through a program of coastwide involvement and communication to avoid cargo dislocations among ports caused by facilitation variances.
7. To cooperate with the customs broker community to carry forward cooperative facilitation programs.
8. To generate the broadest possible base of support among all interested parties to ensure an adequte level of Customs for the present and future at all West Coast ports.
9. To work toward procedures which will facilitate the needs of the rapidly changing intermodal transportation system while recognizing the enforcement responsibilities of the U.S. Customs Service.
10. To ensure that West Coast ports have meaningful input into the U.S. Customs Service decision making process concerning staffing and administering U.S. Customs Service enforcement and trade facilitation responsibilities.
11. To ensure to the greatest extent possible uniform application of U.S. Customs Service procedures at all West Coast ports through a regional organizational structure overseeing the activities of the West Coast Customs Districts.

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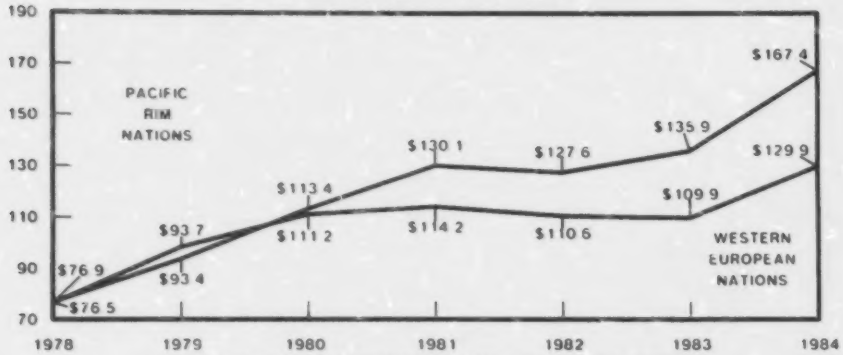
EXHIBIT #3

THE CHANGING CURRENT TOTAL TRADE WITH U.S.

(IN BILLIONS OF U.S. DOLLARS)



SINCE 1980 PACIFIC RIM NATIONS HAVE SURPASSED WESTERN EUROPEAN NATIONS AS U.S. TRADING PARTNERS

Source U.S. Dept. of Commerce

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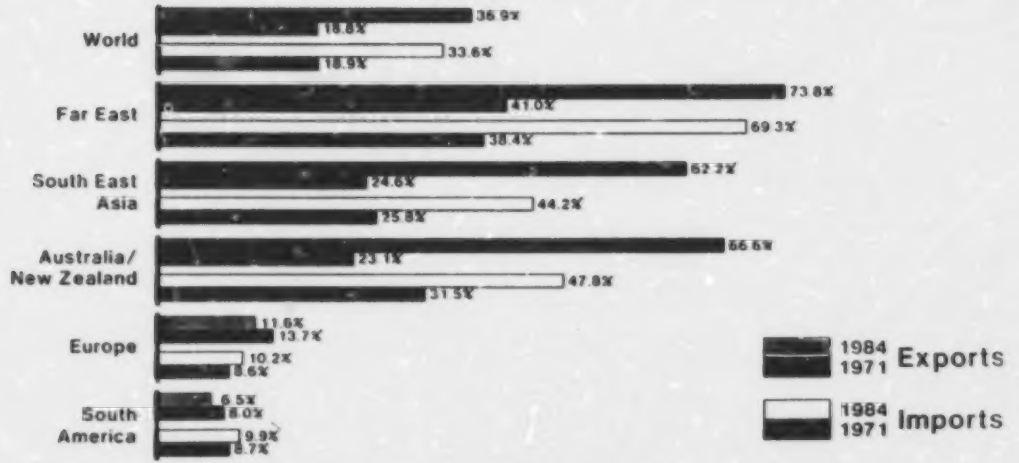
EXHIBIT #4

WEST COAST SHARE OF U.S. LINER FOREIGN TRADE

SHORT TONS



SOURCE: U.S. DEPARTMENT OF COMMERCE (FOREIGN TRADE DIVISION)

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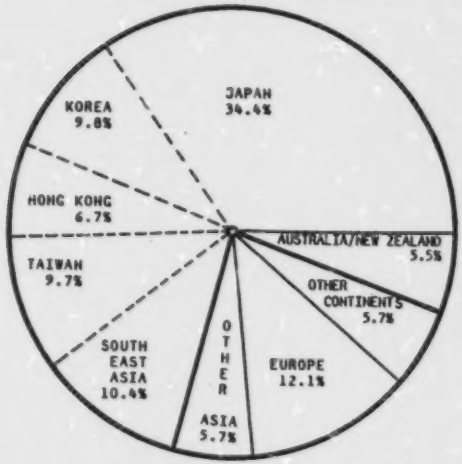
EXHIBIT #5

TRADING PARTNERS - SHORT TONS
U.S. WEST COAST LINER TRADE
1980

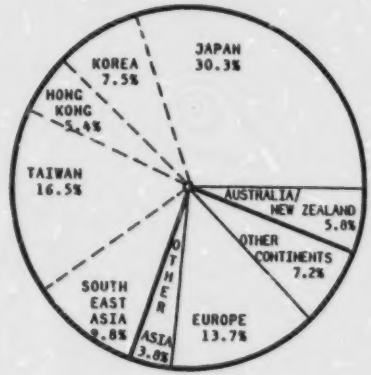
PACIFIC BASIN 76.5%



13.0 Million Short Tons

EXPORTS
FROM U.S. WEST COAST

PACIFIC BASIN 75.3%



8.1 Million Short Tons

IMPORTS
TO U.S. WEST COAST

SOURCE: U.S. DEPARTMENT OF COMMERCE (FOREIGN TRADE DIVISION)

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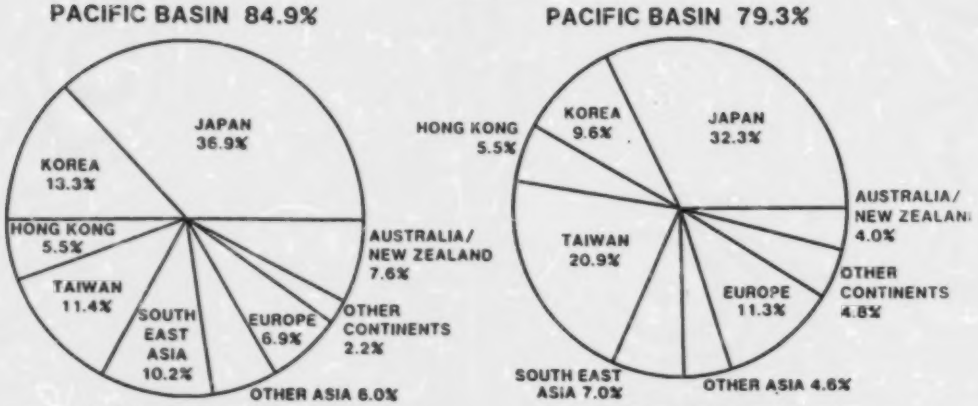
EXHIBIT #6

TRADING PARTNERS - SHORT TONS
U.S. WEST COAST LINER TRADE

1984



13.1 MILLION SHORT TONS
EXPORTS
FROM U.S. WEST COAST

SOURCE: U.S. DEPT. OF COMMERCE (FOREIGN TRADE DIVISION)

12.4 MILLION SHORT TONS
IMPORTS
TO U.S. WEST COAST

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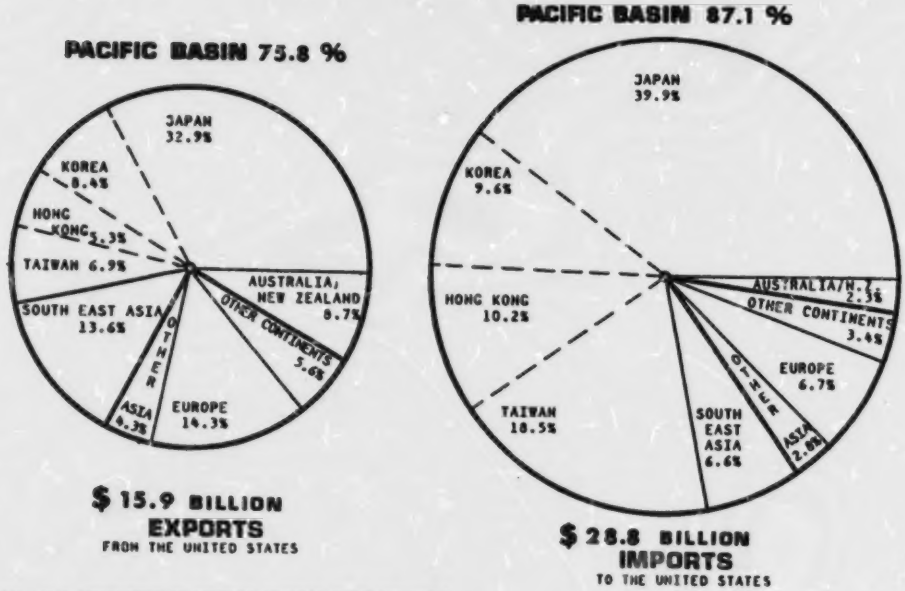
EXHIBIT #7

TRADING PARTNERS - DOLLAR VALUE
U.S. WEST COAST LINER TRADE
1980



SOURCE: U.S. DEPARTMENT OF COMMERCE (FOREIGN TRADE DIVISION)

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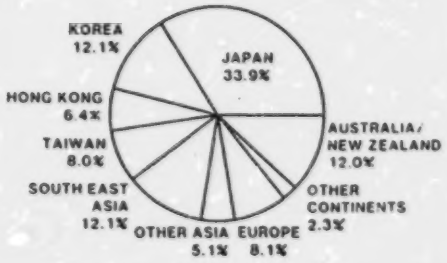
EXHIBIT # 8

TRADING PARTNERS - DOLLAR VALUE
U.S. WEST COAST LINER TRADE

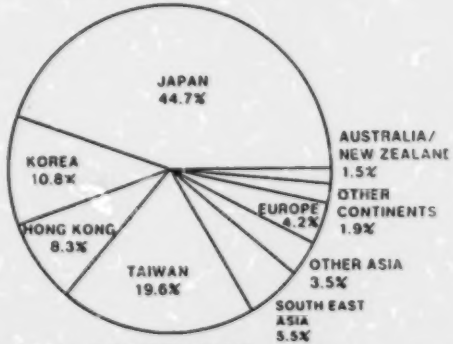
1984

PACIFIC BASIN 84.5%



$17.7 BILLION
EXPORTS
FROM THE UNITED STATES

PACIFIC BASIN 90.4%



$52.8 BILLION
IMPORTS
TO THE UNITED STATES

SOURCE: U.S. DEPT. OF COMMERCE
(FOREIGN TRADE DIVISION)

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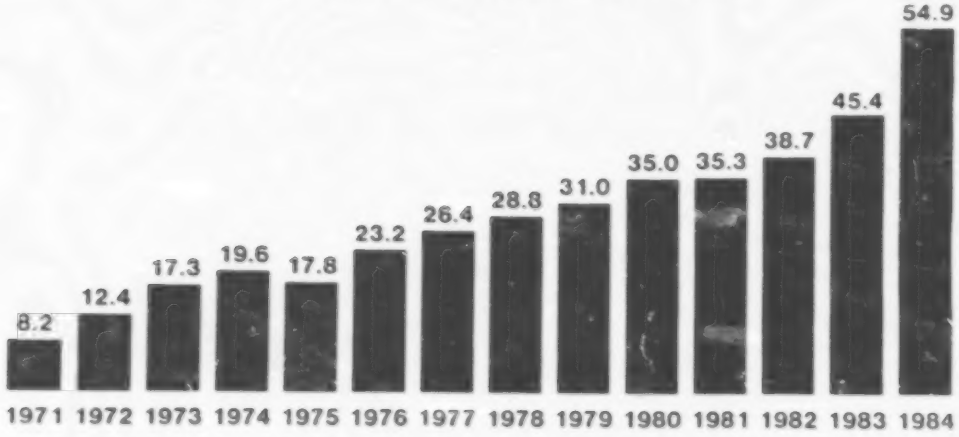
EXHIBIT #9

WEST COAST CONTAINER TONNAGE

(1971-1984) MILLION REVENUE TONS



SOURCE: PACIFIC MARITIME ASSOCIATION

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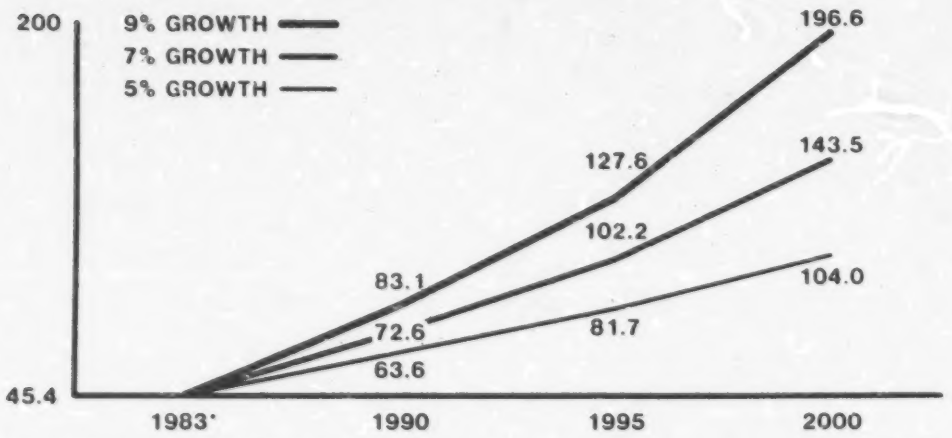
EXHIBIT #10

PORT OF OAKLAND

PROJECTED WEST COAST CONTAINER TONNAGE

MILLION REVENUE TONS



*SOURCE: PACIFIC MARITIME ASSOC.

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Mr. OBERSTAR [presiding]. Mr. Dugan.

STATEMENT OF MICHAEL DUGAN

Mr. DUGAN. Mr. Chairman, thank you for inviting the National Customs Brokers and Forwarders Association of America, to testify before your hearing today. I am Michael F. Dugan of Western Overseas Corp., Customs Brokers and Freight Forwarders who maintain offices in several Customs districts. I am a member of the board of directors of NCBFAA and a director of the Los Angeles Customs Brokers Association. I am pleased to have the opportunity to comment on the effectiveness of Customs' regulation of cargo clearance through U.S. ports. My experience has, Mr. Chairman, familiarized me with the extreme end of the scale—circumstances where Customs staffing has been so inadequate that it has threatened our ports' reputation internationally. It has cost area businesses millions of dollars in demurrage fees and outdated merchandise, and limited enforcement of our laws at the loss of millions of dollars more in uncollected duties and undetected contraband. Let me explain how we have reached this point.

During the past decade it has been our good fortune to watch the volume of import traffic through the Los Angeles/Long Beach Customs District increase steadily. Formal Customs entries through our ports have increased 172 percent and Customs collections are up 322 percent. We have been extremely concerned that the U.S. Customs Service has failed to recognize this and meet the current needs of our ports.

During this same decade it has troubled us to watch the Los Angeles Customs' staff decrease in size in many areas. The number of inspectors, commodity specialists and clerical support personnel has declined during the period when the increases in volume were greatest. Most recently, and of particular interest to this committee, has been the near total disbandment of the Customs Marine Division on a national basis. This was the division primarily responsible for enforcement of many of our nations maritime laws. We are concerned that in an effort to reduce staff, compromises may be made to manifest and cargo control, coastwise clearance and the Jones Act.

Los Angeles is a major quota entry port as a result of its geography—many vessels call at Los Angeles first, and many quotas apply to Far East countries. With the new levels of import quota restrictions established by Congress, we expect a 400-percent increase in terms requiring quota clearance through the port this year.

Our cargo projections further indicate a doubling in import and export tonnage in the next 10 years. In light of this prospect, we believe the U.S. Customs Service is approaching the future properly through the study and inauguration of computerized programs such as automated clearance system and automated broker interface. We heartily support the objective of streamlining the process and automating wherever possible. However, experience has taught us the pitfalls of looking to the future without applying the resources necessary to reach these goals. Customs' computerization efforts to date have been disappointing: Accept is a good example.

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The Los Angeles Customs and Freight Brokers Association cautiously agreed to support the program with the understanding that the Los Angeles district would be able to hire data input clerks to operate the terminals. All of those positions were canceled, resulting in the use of inspectors to operate the terminals. This negated one of Customs' major benefits from the program—freeing up inspector manpower to do more and better examinations—and forced Customs into using high salary level, experienced inspectors to perform entry level clerical tasks.

Automation cannot succeed without the proper allocation of qualified personnel. Thus far I have dwelled on the situation at the Ports of Long Beach and Los Angeles; however, it is a problem of acute importance ot the entire west coast and ultimately across the Nation. We believe Customs has failed to acknowledge the importance of staffing in reaching its congressionally mandated objectives. We strongly support the efforts of the Service to control drug-related activities; however, by directing resources away from cargo clearance toward almost 100 percent law enforcement activities, they have deprived the commercial area of the ability to enforce quotas, collect duties and intercept contraband. In cutting staff and explaining that these functions would not be computerized, we believe they have failed to implement basic programs designed to be the foundation for the future. Year by year, through staff cuts, hiring freezes, and attrition, Customs has increased the pressure within their agency to the extent that they must be reaching the breaking point. They have taken this course even though they derive $20 in duties for every $1 that they spend in staff.

Forces are now underway within the Congress to remedy this—in that authorizing committees, in the appropriating committees, in the budget committees and in oversight committees such as yours. We are grateful for your attention to our plight by holding this hearing today, and we urge you to provide the Customs Service the additional staff that they need to do the job of collecting duties, clearing cargo, and enforcing our laws.

Thank you, Mr. Chairman, I will be glad to respond to questions about this and any other matter before the committee today.

Mr. OBERSTAR. I would like to thank the panel for the presentations this morning. They have been an excellent mass of factual data assembled to give us a very comprehensive picture of the totality of U.S. trades dollar impact on domestic economy and it is significant in our posture in world trade.

Surely in matters of this kind the delays that you experience in the Customs Service are frustrating and costly. What is missing I think in the testimony perhaps are day-to-day examples, and I would like to hear something in a more specific sense.

For example, demurrage costs which you have to incur when there are delays. What are the dimensions of that problem? How much are costs, how are they assessed? Do they vary from one cargo to another? Are they assessed by tonnage? How significant is this, let's say, from each one of your perspectives? What have these delays added up to in total dollar amounts in the course of a year?

Mr. CRANDALL. The answer to that question is a vast one, but a summary of one importer, this is the case of Montgomery Ward in

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Los Angeles, they claimed they paid $550,000 in demurrage charges because of delays in customs clearances.

That is a major importer through Los Angeles. In other congressional testimony, Sears Roebuck, Montgomery Ward, and J.C. Penney were very outspoken of the problems they faced. As to the total amount of demurrage costs, I couldn't give that to you. The demurrage cost plus delays, delays of 2 and 3 weeks, were not uncommon.

Mr. OBERSTAR. Delays of 2 and 3 weeks in clearing commodities through Customs for those importers.

Mr. CRANDALL. Not uncommon. Further than that, they would plan their sales of merchandise to be in the stores at a certain point, they couldn't get the cargo cleared, the merchandise wasn't in the stores when the sales were to be and there are lost sales as a result of this.

Mr. OBERSTAR. Have any of your customers or any of those you deal with, such as Wards, Sears, Penney's and others, given you any figures as to dollar impact of loss sales because of delays in clearing items through customs.

Mr. SCHUYLER. I am not aware of any. Mr. Dugan.

Mr. DUGAN. I would be happy to provide the committee with those.

[The information follows:]

NATIONAL CUSTOMS BROKERS & FORWARDERS
ASSOCIATION OF AMERICA, INC.,
New York, NY, September 2, 1985.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
Longworth HOB, Washington, DC.
Attention: Mark Aspinwall.

DEAR CHAIRMAN JONES: In reply to your letter of July 25, on behalf of Michael Dugan and the National Customs Brokers and Forwarders Association, I am pleased to provide the following responses to your questions:

1. The House Committee on Merchant Marine and Fisheries has had substantial effect on Customs even before the hearing. Your focus on levels of staffing and on delays in clearing commercial cargo—much of which is described in my testimony, particularly as it relates to the Los Angeles area—have put Customs at the witness table and raised questions about resources that are very hard to defend. This in turn has created greater willingness on Customs' part to make the necessary adjustments where serious staffing shortages occur.

Earlier in the year, several other Congressional committees also expressed serious concern about these matters: the Senate Finance Committee, the Senate Appropriations Committee, the House Ways and Means Committee, the House Appropriations Committee and the House Committee on Energy and Commerce. In some instances interest was registered as part of the authorization process, in others in the context of appropriations, and in yet others as an oversight function. In all, five hearings have been held in 1985 to consider this issue.

2. A phase-out of inspection of in-bond cargo at inland destination points would have a substantial disruptive effect on the movement of cargo through our seaports. The specious logic of proposals to eliminate in-land inspection is that centralization provides greater eifficiency. It will in fact have the opposite effect however. Because of its volume of commerce in particular products, the result for many seaports will be major congestion, not only for incoming but also outgoing cargo. There are limited physical facilities at a port and that space is already clogged in many major U.S. ports—even without the addition of inbound cargo awaiting inspection. And while on paper you can expect customs personnel to be added from the inland areas, inspectors will in practice be unable to cope with the huge increase in waiting cargo scattered in numerous and diverse physical locations to accommodate the upsurge in volume.

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The effect in inland ports is obvious: it will be the death of those communities as international entities and drive trade-oriented businesses out of the local economy. The net effect will be a severe financial loss to the economies of a great number of our inland cities.

Mr. Chairman, please let me know if you desire NCBFAA to provide further information to the Committee.

Sincerely,

J.H. KENT,
Washington Representative.

Mr. OBERSTAR. When demurrage charges are paid, they are paid to the vessels; is that right?

Mr. DUGAN. To the port, sir.

Mr. OBERSTAR. Not to the vessel.

Mr. CRANDALL. Not to the vessel.

Mr. OBERSTAR. The cargo is sitting in port so you are paying warehouse charges.

Mr. SCHUYLER. Unless it stays in the container and there is an assessment for the container on a per diem basis, which differs by different tariffs, and so forth.

Mr. CRANDALL. There are demurrage charges for the vessel too.

Mr. SCHUYLER. Yes.

Mr. CRANDALL. I think another dimension of the problem is because of the increasing workload and automation. In fact, paperwork was lost and Customs would have to start all over again with the clearance processing. It was just very frustrating to have that amount of cargo and not be able to handle the cargo efficiently.

Mr. OBERSTAR. When you cite the number of personnel required, those are numbers in addition to customs inspectors already in place; is that correct?

Mr. CRANDALL. That is correct, in addition. That I understand is specifically to take care of the situation now.

Mr. OBERSTAR. Just to keep up with current demand.

Mr. CRANDALL. Just to keep up with current demand. An example we have in Oakland, we have major container terminals, they have a cargo inspector there 4 hours a day.

So a shipper may come in the afternoon and they will say, sorry, the inspector was here this morning, you should have come in the morning. The container terminals can do a lot of coordination and make appointments. There is no question those kinds of things can work out with enough time and effort. But it still limits the flexibility in the shipping community to have that kind of limitation on the cargo clearance procedures.

Mr. OBERSTAR. What is the principal problem? Obviously, shortage of personnel, if you don't have enough manpower to actually do the job of inspection. What is—in a practical sense in a day-to-day operation, what is it that is so time consuming and that requires additional personnel?

Mr. DUGAN. If I could just relate the Los Angeles situation, particularly with the implementation of the Accept Program. The accept system was designed to receive paperwork, basic entry information at five different locations.

The theory was, we as custom brokers or importers could present documents to the U.S. Customs Service at five different locations, they would have people staffed at each location and they would give us an immediate answer, within—I think it was four original-

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ly. Forty-eight hours is the norm. They would provide us with the information immediately that container could in fact be moved from the piers.

In practice, the notification comes back to us at any one of these five different locations or it goes directly to the pier. The real problem is we can't find the paperwork. Then we are asked to submit a duplicate document.

It may be 60 percent of the cargo is released, but in practice that 20 percent, if it is your 20 percent, which is delayed for the additional week or 2 weeks—J.C. Penney's, Montgomery Ward's, and Sears Roebuck can stand that, but not the small operator who has a sale in some other part of the country.

It is a very serious problem. I think these horror stories—we only hear of the horror stories. I suggest to you there is probably 10 percent of the cargo held up a minimum of 4 days, and I think that is a serious problem.

Mr. OBERSTAR. Ten percent of the cargo held up a minimum of 4 days.

Mr. DUGAN. Yes, sir.

Mr. OBERSTAR. What are demurrage costs for a period that long? I think I asked earlier how are they assessed? Can you give me some——

Mr. DUGAN. As an example, we ran into an unfortuante situation over the 4th of July weekend where due to loss papers, there were 10 containers of frozen meat not available for release on, I think it was a Wednesday before the 4th of July holiday. In fact, those containers were not able to move off the piers until Monday. There was a 5 day delay here.

The real problem was papers were lost on the Tuesday prior to the holiday. It was over $10,000 of demurrage involved. That is a real problem to him.

Mr. OBERSTAR. In certain cases I can imagine that could eat up profitability of a particular shipper.

Mr. DUGAN. Yes, sir. Particularly with meat importers dealing with half a cent and 1 cent on a pound of beef, it makes a material difference as to whether or not he made or lost money on that particular movement.

Mr. OBERSTAR. Is the problem then principally that of processing papers? Is that what we are dealing with in these Customs delays?

Mr. DUGAN. I think it is a combination. What we are asking for is an adequate number of staff properly trained to input the data. We have no objection to Customs implementing a computerized system. We don't think they should use talented inspectors we need on the piers to release the cargo. Let's assume we have the proper staffing to input the information, provide that to an experienced inspector who can then justify the release, then we need a system to get those documents back to us.

What I am suggesting is that system has fallen down, not only in Los Angeles—we maintain offices in San Francisco. In Seattle, we have exactly the same problem.

Mr. OBERSTAR. One of our colleagues, Mr. Anderson, who serves on this committee, is chairman of another subcommittee holding hearings this morning on surface transportation, he asked the following questions to be raised.

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First of all, what specific steps do you believe the Customs Service ought to take at the port of Long Beach and Los Angeles to improve entry clearance procedures.

Mr. DUGAN. If you wish, I would like to respond to that. I think it is—as I previously mentioned—I think we need more clerical level people to input the data. Then we need a system of insuring these documents can be traced throughout the system. Or if they can't be found in a very short period of time, we need a system to duplicate those documents and not wait for 48 hours before a new set of documents can go through the system.

Certainly computers are set up today where if they find there is a duplicate set of documents, the system can be so organized that those items are noted and we can follow through with the release of the merchandise.

We shouldn't have to stop everything for a 48-hour period before we can send in a new set of documents to release that cargo.

Mr. OBERSTAR. Thank you.

There have been some estimates by the Corps of Engineers that the ports of Los Angeles and Long Beach by the year 2000 will be bringing in about $6 billion in Customs revenues.

The question is whether the personnel, current and planned for those ports, is adequate to handle that amount of volume. What do you think?

Mr. DUGAN. I certainly can respond to Los Angeles and Long Beach. We don't think we have the adequate staffing today. We are forced to pay overtime to have inspectors to key in the information at these various Accept sites on a daily basis now. In other words, if we can't process the work during the 8-hour period, it is our responsibility to hire Customs officers on an overtime basis to process that workload. We don't think we are properly staffed today, and I think most of our testimony points in that direction.

Mr. SCHUYLER. It relates back to personnel. Whenever they have a drug bust or other projects that have to be done, and bringing up the quota system, those people will stay inside, they don't get out to release the cargo.

Mr. CRANDALL. Another point I would like to raise on specific things that are needed, the Los Angeles district, San Francisco and Seattle, in support of their need for additional positions, they list the positions they need in certain areas. As for example in Los Angeles, they specifically state they need 30 commodities specialists. These are specialists that will inspect the specific merchandise and define it as a toy or a machine or what specifically it is, or the country of origin, the detailed things.

I am not familiar with all of the intricacies here, but that has been a common problem, that they can't identify the specific category of merchandise to determine what the duty is. And that creates a great deal of delay. In the San Francisco Customs District, we need eight more import specialists.

It was brought up by Mr. Dugan about Customs inspectors putting in the data in the new Accept System. I mean, these were people accustomed to doing inspections on the dock and thinking with their head as to what should be done in clearance, and the next thing you know they are punching in data into a computer—they are not used to a typewriter, and are punching data into a

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machine where Customs didn't hire input clerks at a lower salary to put that data in and have the inspectors clearing cargo.

It wasn't planned. This is a serious concern. So there is a multitude of specific things. But like in Oakland, the San Francisco Customs District just said no more international flights, we don't have enough inspectors, this is it. We are limiting our flexibility, we are limiting our ability to expand our international flight activity. I mean, if we can't have the Customs clearance people at the airports this limits international passengers to spend money in the United States. There are a lot of things involved here.

Mr. OBERSTAR. I think you are responding to the question—what I am trying to get at, it is a personnel problem. You are trying to say Customs is trying to squeeze inspectors into a computer operator position. They aren't getting the most for their money, they aren't using personnel in the most effective way.

Mr. CRANDALL. There is another situation Mr. Dugan brought up. Container terminal operators have to pay for overtime of Customs inspectors if they are not in the 8 to 5 period. The amount of money paid for overtime can be quite substantial, and perhaps some of the Customs brokers could speak to it more specifically.

But that money that is paid to Customs for overtime services goes into the General Treasury and doesn't go back to the Customs budget. That doesn't seem like that is a fair allocation of accountability for expenditures and appropriations for a budget.

Mr. OBERSTAR. You are quite right. We have experienced similar problems in my district just on personnel movement between the United States and Canada, and the same kind of problem with Customs and Immigration both.

Mr. CRANDALL. Another thing ought to be brought up with the Accept system is that Customs said, "We want to implement Accept. In Oakland they said,"If we don't implement Accept, you are going to be in terrible shape. We don't have the inspectors. And if we don't implement Accept, you are going to be in bad shape."

But you have got to provide the space for the Accept site. We had to provide 4,000 square feet of office space at our expense. There was no way they said they could pay for it. In Los Angeles, the Port of Los Angeles and Long Beach not only provided the space but they paid for the CRT devices.

Mrs. Bentley asked a question about the de-vanning program. Customs wants to institute a de-vanning program, but they want the port to provide the facility. We are being pressured and if we do not do it, our Customs Service is going to suffer. And yet if we do do it, it is beyond our financial capability to provide a central de-vanning site. There are some real problems related to this kind of thing, and I do not think that the Customs has looked at it very logically and planned things, to have these kinds of problems we are facing on the Pacific coast.

Mr. OBERSTAR. It is clearly one of those areas where budget constraints have had a great effect. Revenue generated for the Federal Treasury, nearly $9 billion a year in Customs revenue and yet the source of production of those revenues, the Customs inspectors, is being reduced.

The chair will yield to the gentlewoman from Maryland, Mrs. Bentley.

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Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. Dugan, you mentioned that the 10 percent of the cargo is delayed for 4 days.

Mr. DUGAN. That is in my judgment, over the total universe of the cargo cleared in Long Beach.

Mrs. BENTLEY. What about the 90 percent?

Mr. DUGAN. I would say that is probably moved within 24 hours. Actually some of that cargo will move the same day the vessel arrives at port.

Mrs. BENTLEY. I wish we had a record like that.

On the overtime, Mr. Crandall, the customer paying for the overtime for Customs inspections is not new, is it?

Mr. CRANDALL. I do not think it is new. It is raising the question why cannot it go back to the Customs budget so they could have more justification to hire more inspectors is the point.

Mrs. BENTLEY. Do you know why they limit the amount of overtime that an inspector can earn?

Mr. CRANDALL. I do not think I could respond specifically. I could just allude to it, that they have only got so many inspectors and even if you do get paid for overtime, you can only work so many hours in a week, and it creates quite a problem.

Mrs. BENTLEY. I do want to thank all three of you for your excellent presentation on the data. What you pointed out here typifies what is happening in our ports. I have had the privilege of visiting all three of your ports over the years, Oakland only about 2 months ago. You are all to be commended on how you developed, although we on the east coast had not developed as well. And your problems obviously on the surface are similar to those we are encountering in Baltimore and other east coast ports.

However, I must say that I hope your prognostications are not correct, are not accurate, because as these import tonnages—as your import tonnages have been skyrocketing, the industrial base of the United States has been eroding proportionately. I deem this to be very critical. However, this is not the purpose of this hearing this morning, and so I will not get into that because that is another subject that we will have to fight on later.

But I am very concerned about the tonnage, the amount of imports that is coming in and our people being put out of work.

Again, let me thank you for all your input and your information.

Mr. OBERSTAR. Back to the Long Beach and Los Angeles question again, what specific types of problems have you encountered that could be alleviated by increased inspector personnel apart from this computerization matter that we have already discussed? That could be applied in a more general fashion also to all other ports along the coastal area.

Mr. DUGAN. One other problem, sir, is the movement of the inspectors from the piers who were normally available at least a half a day and in most cases they were available at a particular dock the entire day. Many docks are now staffed either 4 days, 4 hours per day, or not at all. Maybe the inspector will go there every other day or maybe you will have to call for an appointment. I am not suggesting that is a bad use of Customs personnel. In many cases it is good judgment. I think in several others we find we are

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moving Customs inspectors throughout the Los Angeles-Long Beach Harbor constantly.

We had a gentleman, to him it was a very serious problem. He just imported a sailboat. He was unable to get his hands on it for a week. If that was my sailboat or yours and you had been waiting for it for a 4-month period, it is a very real problem.

In the total context of bringing goods into the United States, it is a very small problem; but what I am suggesting is that it is an example of how the rotation of inspectors can delay something up to a week to get a particular commodity released, lumber which is brought into a particular dock, automobiles which are brought into a particular dock. The general cargo probably moves very fast, but these isolated commodities that require an inspector to go there at a particular point in time are a serious problem.

We have a serious problem with the importation of goods from other ports. That is what we called the in-bond or in transit movements. These will come to a particular railhead and then we must arrange to have an inspector meet that cargo to examine it. Particular commodities such as movie films require a specific inspector to get there to review them. Many of these specific commodities must be scheduled, and some of those schedules take a long time to arrange. I say a long time—3 days.

Mr. OBERSTAR. Mr. Schuyler.

Mr. SCHUYLER. We would like to give credit to some of your cohorts, associates here in Congress: Congressman Rahall and his Subcommittee on Appropriations and several of the northwestern Congressmen: Norman Dicks, Mr. Lowry, and others. There are several in California who helped us in the preliminary method to get 23 new inspectors into the Northwest and 65 in the Los Angeles area. That happened in the 1984 budget, and now we are fighting for the 1986 budget.

Mr. OBERSTAR. That was no small achievement, given all the budget restraints, cutbacks in personnel that the administration has been pushing. So to get 20 is a very significant achievement. Let us hope——

Mr. SCHUYLER. It was just making up some of the shortfall.

Mr. OBERSTAR. How much time do you estimate Customs inspectors spend in their work and what portion of their time should they be spending on paperwork in your judgment as opposed to other duties you might find more productive?

Mr. SCHUYLER. In the old days they used to have 8 to 5 or 9 to 4 operation in the docks and then go back to the office for their paperwork, but that has been cut down to a half day at this terminal and a half a day at another terminal. It is not a full day. So if you want to come in and get Hancock straight and you had the paperwork, the inspector would not be there to put his mark on it. You would have to wait until another day or chase him down at some other terminal.

Mr. OBERSTAR. As I look these numbers over, you are talking about a little over 300 additional inspectors that would be needed to keep pace with the current situation in San Francisco, Seattle——

Mr. CRANDALL. Sixty-four in San Francisco and 66 in Seattle.

Mr. OBERSTAR. Just a little under 300.

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Mr. CRANDALL. I think clearly the cargo flow increases are substantially more than that ratio of increases in Customs inspectors even with automation. I saw one testimony of Mr. De Angelus where he estimated there would be a 25-percent saving in manpower by automation. Aside from the fact it is taking a long time to get the automation implemented, in the meantime there are all the delays that are happening because our cargo increases on the Pacific coast are greater than the manpower savings from automation. We better have more Customs inspectors than we do now even with automation.

There is another question I wish I could get an answer from somebody on, and that is regarding the Customs collections which are $12½ billion. I just wonder if we had more Customs inspectors that could properly inspect the cargo, I wonder if the amount of collections would not increase more than would be necessary to pay for the additional personnel. We would have more money and still have the productivity we need.

Mr. OBERSTAR. You will not hear any argument on that point from this committee. We have recognized for many years and have focused on this matter for the maritime services and attempted to raise the issue with the Treasury Department. There is a very significant issue of productivity and of return on investment, investment being the personnel we put into this system, return on that investment to the U.S. Treasury; and you would think at a time of budget deficits and need for revenue the administration would be seeking means of increasing revenues.

And just following common business judgment, if you make a little more of an investment, your return will be hopefully commensurately increased. Regrettably this is one area where the logic and good common sense has not applied. We are hoping through these hearings to focus public attention on the issue and to bring the facts to the attention of our colleagues in the Congress so that even if the administration does not understand or respond at least those of us in the legislative process can persuade our colleagues to do so.

We hope with your testimony here today we can take this more significant step toward that goal, and I thank you very much for being with us this morning.

The subcommittee will stand in recess until 2:30 this afternoon.

[Whereupon, at 12:25 p.m., the subcommittee recessed, to reconvene at 2:30 p.m.]

Mr. TAUZIN [presiding]. The committee will come to order. I have been asked to announce that Chairman Jones is required to be on the House floor with reference to the amendments to the Clean Water Act. He has asked that I chair the meeting in his stead.

We are now ready to hear, with apologies from the committee for delays, the Outer Continental Shelf panel, represented first by Mr. William Mayberry, executive director of the Offshore Marine Service Association in New Orleans, LA. Bill, you may proceed.

STATEMENT OF WILLIAM A. MAYBERRY, EXECUTIVE DIRECTOR, OFFSHORE MARINE SERVICE ASSOCIATION, NEW ORLEANS, LA

Mr. MAYBERRY. Thank you, Mr. Chairman.

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In my prepared statement, I neglected to identify the Offshore Marine Service Association. The association represents the interest of owners and operators of about 3,000 American-flag vessels that provide transportation for the offshore oil industry.

In fact, this industry and its equipment, which is home grown in the United States, has served as a pattern for foreign equipment in their design to develop their offshore fleets.

Unfortunately, with a downturn in the industry, many members face bankruptcy and have equipment unemployed. And issues such as the one discussed in our statement threaten the survival of our American industries.

Although our equipment works worldwide, the bulk and strength of the indusry is its domestic market. And we work in these markets without subsidy. Unlike our foreign competitors who have the advantage of tax breaks, building subsidies and even operational differential subsidies, we are on our own when it comes to working here in the domestic market.

When it comes to penetrations of the domestic market, successful intrusion into Jones Act Trade, we suspect foreign governments pat their shipping companies on the heads and say, go get them.

Except for the members of the House Merchant Marine and Fisheries Committee, we don't seem to experience that kind of support, neither from the administration, State Department, Customs, the Coast Guard, or Maritime Administration. In fact, when it comes to the Jones Act, the reverse seems to be more and more true. We need your support on concerns raised here.

Just as an aside for the record, I am sure our chairman, Mr. Jones, is not related at all to the venerable Congressman of the same name, and I must point out that the American industry has failed to erect a shrine to that gentleman, but if you would please let the record reflect to Mr. Jones, we are quite prepared to support a Jones Act II, at least for the OCS.

Now, Customs was invited and spoke briefly about their enforcement capabilities, and I would like to point out to the members of this committee that in rulings such as Customs created in this particular time, it is virtually unenforceable. Not that the issue happened, but who knows whether the warehouse vessel anchors or doesn't anchor.

In their particular ruling they applied to, they demanded that if American equipment, American merchandise, was delivered to the warehouse vessel, it must be redelivered at the exact point where it was received. This may be moot to a vessel that continuously operates, but I submit it is virtually unenforceable.

As wives will testify when their husbands are far away from home, there is a temptation to cheat a little bit——

Mr. TAUZIN. Let's not meddle now.

Mr. MAYBERRY. Customs also mentioned the 1956 ruling that extended the Jones Act to the Outer Continental Shelf, and I must say I have that framed and mounted over my desk. But I am equally sure that a great many companies have other rulings of Customs framed over their desk, and unfortunately, and perhaps the committee is unaware of this, once Customs issues the ruling it remains a document for anyone's use.

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In this instant case, why other companies who have formed joint ventures with foreign operators just go about their business, and no one knows they are doing it, they don't know what portfolio they are working under, and the various terms of the Customs ruling as it was structured in the hypothetical question, who knows whether they are adhering exactly to the wording of that? In other words, enforcement is extremely difficult.

Now, in the field, if we have some concern about an operation that is called to our attention, we must, of course, go to the regional Custom Office and say, hey, we think there is some violation here, and they say, thank you very much, if you will provide photographs, written statements, copies of the contract, why they will do something about it.

I would submit, Mr. Chairman, if we had access to that we wouldn't have to go through Customs, we would proceed to the courts.

I was equally kind of pleased to hear the term "artificial island." I wondered where it came from, and with all apologies to the lawyers present, it would take a Customs lawyer the opportunity to explore and find out that the Supreme Court had a ruling on an artificial island that actually defined what it was.

But the lawyer overlooked the fact that this underwater mountain that was being erected was in fact attached to the Continental Shelf and soley there for the purpose of oil exploration, yet they have to go to this artificial island ruling.

The construction of artificial islands should have been provided for by American equipment and not as Customs eventually ruled that it was quite all right for Canadian icebreakers to do that kind of work.

I won't go into my statement, but I will be prepared to answer any questions that the committee might have.

[The statement of Mr. Mayberry follows:]

STATEMENT OF CAPT. WILLIAM A. MAYBERRY, EXECUTIVE DIRECTOR, OFFSHORE MARINE SERVICE ASSOCIATION

In 1978, the Congress passed amendments to the Outer Continental Shelf Act to provide, among other reasons, needed statutory language to keep up with the vast technological changes in Offshore Development and reaffirming the need to offer more protection for the environment. Other sections to be administered by the United States Coast Guard suggested, if you will, a strong "buy American" program (Section 31) which, with certain exceptions, demanded the use of American Equipment on the OCS. Also administered by the Coast Guard and finally appearing as regulation in 1982, was 33 CFR Part 141, that restricted the employment of aliens on the OCS.

In Section 401 of the Act, later codified as 43 USC 1333(a)(1), although previously understood, in the pertinent part, provided that the constitution and laws and civil and political jurisdiction of the United States were extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources and so on. It is our recollection the language was add because the Department of Customs had failed in some instances to levy import taxes on certain materials installed at drilling locations outside the contiguous zone. Be that as it may, by so identifying the drilling location as a port or place in the United States, one of the laws extended was the so-called Jones Act.

In a hypothetical case submitted by a law firm on behalf of their client, a ruling, among other things, was requested from the Department of Customs to ascertain if goods and materials could be moved from a foreign flag warehouse vessel anchored

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on the OCS by foreign flag support vessel for subsequent delivery to a drilling location.

Customs ruled, given these circumstances, that the material need not be moved or transported by a coastwise qualified vessel.

The Offshore Marine Service Association objected and requested the ruling be reversed in that the warehouse vessel was present on the OCS solely for the purpose of exploring for, developing, or producing resources from the OCS and that by being anchored in the OCS was in itself a port or place in the United States and that transport of the materials must be by coastwise qualified vessel. As a matter of fact, not one foot of hole could be drilled without the materials provided by the warehouse vessel.

Customs denied our request. They cited that never before had they ruled that a vessel or unit not anchored or attached to the OCS precisely at the drilling location would be subject to the provisions of 43 USC 1333(a), nor had there been previous objections. They cited consistancy of previous rulings. Although sounding presidential, there were few previous rulings, one we suspect since the 1978 amendment and none that dealt with these circumstances.

As customs informally and later in writing stated that they would welcome Congressional interpretation of the Statute, our next appeal included informing Congressional leaders who were knowledgeable and had participated in the adoption of the Amendments to the OCS Act.

In a strongly worded letter, the Congressional leaders informed the Customs Agency that they had misinterpreted the Act and accordingly, and perhaps reluctantly, Customs reversed their previous ruling to require the use of coastwise qulified vessels for transporting the materials.

Under the procedures of reversals of previous rulings by Customs, the oil company could proceed with its venture exactly as proposed. As we understand the regulations, by identifying themselves as the client on whose behalf the hypothetical letter had been written, upon the showing that acting on good faith based on the hypothetical ruling they had signed contracts in advance of the reversal and that they would suffer great damages by cancellation, they could proceed exactly as planned, that is, anchor the warehouse vessel and use non-qualified foreign flag vessels for transport. It appears they have elected not to anchor the warehouse vessel thus avoiding in their mind, the language of the Act that extended the laws of the United States to a vessel attached to the OCS.

Thus, with the exception of the warehouse vessel not being attached to the OCS, none of the circumstances are altered. The warehouse vessel with its supplies, materials and oils is there for the sole purpose of allowing the drilling unit, the port or place of the United States to explore for, develop and produce the oil resources of the United States. We believe the intent of the law, through the amendments of the OCS Act, is clear. However, it is apparent that clarification of the intent of Congress is necessary for the agency to act forcefully in matters of this sort.

The Bering Sea, of which the Navarin basin is a significant segment, where this lightering evolution is at present ongoing, is a hostile environment. Even during the small summer window the weather, storm frequency, significant swells must be coped with. Even to the non-mariner merely being aware of the fact all cargoes, including the oil, is handled twice, once from the warehouse vessel and again with delivery to the drilling unit, doubles the attendant risk.

This is not to infer that the foreign vessels have not provided necessary safeguards or have competent crews. Certainly, the virtual plethora of foreign equipment, its own little United Nations, include most of our industries leading competitors, a British supply vessel, a Norwegian one, a Singapore bulk freighter and a Danish tanker and a variety of nationalities of the crews on board.

This leads to an obvious question. Why would any company embark on a venture that would clearly lead to a maelstrom of discontent and complaint? Although we have no knowledge of the prices, costs involved, I can say with every authority that competent, qualified, American vessels were and are available at less cost.

If you read foreign trade papers as we are required to do, you would be impressed with the vituperative language as they speak of the American Jones Act. As in this case often in glowing phrases they applaud "penetrations into the lucrative American markets" or some such. They decry our protectionism and proudly announce their home waters to be open to all competition. However, you can count on the fingers of one hand those American vessels of this industry, that are currently working in the U.K., Norway Denmark or Holland. Through the forces at work in these foreign countries, an American vessel under contract has on occasion even found it hard to have milk delivered to their dock. Still, why ventures such as this?

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Often foreign shipping companies have such strong connections with their governments there can be developed a "quid pro quo". There could be the possibility of special advantages to a company that employs foreign vessels. As we suspect all of the possible arrangements are dealt with at the highest levels, we cannot be privy to all the advantages that might be generated.

To us at least, it seems the Department of Customs, The Coast Guard and the Maritime Administration go out of their way to grant those special privileges normally extended to the American Ship owner to foreign interests. We would like to think that our government agencies would extend the benefit of any doubt of the American interest. Although these various rulings do not speak to the issue before this hearing they are germane. We can provide the staff with the various Custom rulings, decisions of the Coast Guard and opinions of the Maritime Administration that on the surface at least, and of course in our opinions, wrongfully decide in favor of the foreign entity.

We must address these enquiries. These hypothetical situations addressed to Customs, requests for decisions from the Coast Guard, opinions of the Maritime Administration often are cloaked with boilerplate and seem, again in our opinion, designed to confuse the agency. Somehow, these rulings, discussions and opinions, which can and do dramatically effect American interest, seemingly fall outside of the Administrative Procedures Act and thus, are not published as rulemaking in the Federal Register, are not known to the public in general, or belatedly, known to the American interests directly affected. These decisions, rulings and opinions are tantamount to rulemakings and should, through some process, have early exposure so that the interested public can have comment and participate in the final agency approval.

We would hope to respond to any question you may have and hope this statement has contributed to the intent of this hearing.

Mr. TAUZIN. We will now hear from Mr. R.J. Criswell, western division production manager of the Amoco Production Co.

STATEMENT OF R.J. CRISWELL, WESTERN DIVISION PRODUCTION MANAGER, AMOCO PRODUCTION CO.; ACCOMPANIED BY THEODORE G. DIMITRY

Mr. CRISWELL. My name is Jack Criswell. I am the western division production manager for Amoco Production Co. In this capacity, I have responsibility for all of Amoco's production operations and drilling activities in all or part of 10 Western States, including Alaska, and on all of the OCS waters off of the western United States.

Amoco Production Co. appreciates the opportunity to describe this summer's activities in the Navarin Basin offshore Alaska. I believe a good understanding of our Bering Sea operations will help this subcommittee deal with many of the critical issues before it. I will briefly discuss the environment in which we are operating, the scope of our activity and the critical events involved.

My comments will only summarize my more extensive written testimony. I request that my full written testimony be incorporated in the record of this hearing.

Mr. TAUZIN. That is our normal procedure.

Mr. CRISWELL. Amoco is one of the top producers of oil and gas in the United States and completed more wells than any other domestic operator in 1984 and in 3 of the last 5 years.

Amoco enjoys a good relationship with our American suppliers, including those in all of the offshore areas in which we operate. This relationship has continued in both good periods and in the more difficult times like the present. We fully expect that our relationship with these suppliers will grow even stronger as we continue to emphasize domestic exploration and production.

The Outer Continental Shelf is one of the last remaining frontier areas where significant amounts of additional oil and gas can be

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found. Industry faces many challenges in exploring and developing these offshore areas.

Alaska's Navarin Basin is perhaps the best current example of such a high risk, high cost offshore area. Industry paid over $631 million in bonuses in April 1984 for the rights to drill on leases in the Navarin Basin.

Amoco's commitment alone was more than 25 percent of the total spent by industry. The exploratory wells drilled in the Navarin this year are expected to cost $20 to $30 million each.

Full field development programs, if and when hydrocarbons are discovered and development becomes economically viable, will cost billions of dollars.

Industry has demonstrated the willingess to invest these substantial sums of money because of the belief that major deposits of hydrocarbons may exist in the area.

If we find hydrocarbons, production will be subject to the same types of challenges we are facing in our exploration program.

This display to my left is a map of the area of offshore western Alaska. I would invite you to come down and look at it after my testimony, but of particular importance on that display are the Alaskan ports of Dutch Harbor, St. Matthew Island, St. Paul Island, and the Navarin Basin area, highlighted in yellow.

As you can see, the Navarin Basin area is extremely remote; it lies almost 400 miles from the west coast of mainland Alaska and approximately 600 miles from the port facilities at Dutch Harbor, AK. Some portions of the Navarin are actually closer to the Soviet Union than to mainland Alaska.

The Navarin Basin area is unlike any other U.S. offshore area previously explored. Operating there is extremely expensive and very demanding. It is one of the most hostile offshore areas of the world. At times it is comparable to the North Sea of Europe with heavy seas and strong storms.

Ice covers most of the area for approximately 5 months per year, precluding any exploration activities during those months. Poor visibility is caused by rain and fog in the summer months and snow during the remainder of the year.

St. Matthew Island is approximately 100 miles from the center of the Navarin Basin and is the closest land to the Navarin Basin. This 100-square-mile island is uninhabited by humans and would be an ideal support base for operations in the Navarin.

Congress, however, established St. Matthew Island as a wildlife refuge and wilderness area. This decision, and a subsequent court ruling, forced industry to use St. Paul Island, 300 miles away, as a staging area. Supplies must be brought into the Navarin by ship, a 7-day round trip from Dutch Harbor. Personnel are transported using a combination of fixed wing aircraft and helicopters.

In early June 1985, Amoco, as operator for itself and several other companies, began drilling the first exploratory well in the Navarin Basin of the Bering Sea. Our exploration plan proposes up to seven exploratory wells. Three to five of these wells will be drilled in 1985 and an additional two to four wells will be drilled in 1986.

Depending upon initial results, similar levels of drilling activities could possibly occur into the late 1980's. Amoco concluded early in

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the planning stages that a largely self-contained operation with all necessary materials and supplies in close proximity to our drilling rigs was necessary. The safety of our personnel and of the overall operation was one of the most important reasons Amoco chose this approach.

Weather in the Navarin can change extremely quickly, and a self-sufficient operation can immediately respond to weather conditions, greatly facilitating movement of personnel and materials. In the event of well problems, necessary materials and equipment are readily available in close proximity to the rigs.

Another factor was the scope of our planned program. As I mentioned, we planned on drilling three to five wells, and the self-contained operation provided some economies of scale, making our plans to drill that many wells somewhat less expensive.

All of these costs savings evaporate, however, if fewer wells are drilled. In fact, if only one well was drilled, this approach would be substantially more expensive.

Amoco is using two American semisubmersible drilling rigs in our 1985 Navarin program. Pictures of these rigs are also shown on the display to my left. We determined that a fleet of marine vessels was necessary to support the drilling operations on these two rigs. First, we needed a floating warehouse, called a wareship, to carry all the materials and supplies needed for our entire summer and fall drilling program.

A product tanker was also needed to carry fuel and water. Large anchor handling supply boats were required to move equipment and supplies to the rigs. Finally, smaller standby boats, equipped for emergency at-sea rescue and oil spill cleanup, were needed on location at or near the rigs at all times.

Amoco initially contacted U.S. Marine operators with experience in Alaskan waters to provide these required vessels. The vessels proposed by the U.S. Marine operators were generally too small to hold the required materials, or were not self-propelled, or were not available for timely modification to fit our drilling schedule. Amoco was able to locate and immediately placed under contract two large American supply boats which met our requirements and had previous experience working in the Alaskan Bering Sea.

We also placed under contract two smaller American boats equipped for emergency rescue and oil spill cleanup. Amoco then had to determine how to meet our requirements for the wareship, the tanker, and the additional support vessels. It was only after it was determined that foreign vessels could be used in full compliance with all U.S. laws and regulations that Amoco contracted with a major foreign marine contractor to supply the additional vessels required.

The foreign wareship is a large 62,000 deadweight ton bulk carrier and is 739 feet long. Extensive shipyard modifications, costing more than $5 million, were required to equip the ship to carry the equipment and materials we needed.

The wareship also contains a heliport, which can be used for refueling and alternate landing during periods of bad weather.

I might interject here that, in at least two instances in the 4 to 5 weeks we have been operating, we have been forced to land our helicopters on the wareship because of mechanical problems, and

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we feel that we were able to avoid an air disaster with this operating approach.

Emergency medical facilities staffed by trained personnel are also available on the wareship. Also included in the marine support fleet is a foreign product tanker, 47,000 deadweight tons and almost 600 feet long. Two foreign supply boats, hired in addition to the two American boats, are each over 200 feet long. The cost of these two foreign supply boats operating over the entire 1985 drilling season is approximately 25 to 30 percent less than the comparable cost of the two American supply boats we also have under contract in this operation.

The two American supply boats are used to make all transfers between coastwise points as required under the U.S. Coastwise Trade Laws. All four of the supply boats are used to move materials from the wareship and the tanker to the drilling rigs. Supply transfers involving the wareship and tanker are always conducted while those two ships are moving. These vessels are able to move into better weather, which allows for a smoother and more timely transfer of materials.

Although various contractors discussed alternative uses of wareships and barges, Amoco never intended to anchor these vessels for operational reasons. Under no foreseen circumstance will the wareship and tanker be at anchor in the Navarin Basin. The water depths of 400 to 500 feet in the area preclude anchoring of these vessels with the anchoring equipment they have on them.

In Amoco's opinion, this particular operating mode is the best, the safest, and the most reliable method of insuring availability of people, materials, and supplies in the harsh and remote environment of the Navarin Basin. It is in full compliance with all U.S. laws and regulations. Mr. Todd Dimitry of the law firm of Vinson & Elkins is present this afternoon to respond to any questions the subcommitte may have on those issues.

In addition, all appropriate Customs reporting procedures are strictly followed each time a transfer of materials is made from the wareship and tanker to either one of the drilling rigs.

The industry is dealing with significant logistical and technical challenges presented by a harsh climate and the remoteness of the Navarin Basin. We are also taking the necessary economic risks, but we continue to face legal and public policy challenges, like suggestions that Federal law allow only the use of American ships and supplies in the OCS as well as proposals to further restrict OCS leasing. A strong competitive marine support industry is a vital part of our American oil industry, but such policies tend to reduce the competitiveness of the American OCS exploration and development. In addition, foreign countries might adopt similar restrictions on American operations overseas. We feel that Congress should resist these proposals, which are inappropriate in today's economic climate. All of us appreciate the difficulties faced by Congress in attempting to deal with the reality of the world marketplace, not just in oil, but in steel, automobiles, electronic goods, and many other numerous goods and services.

Amoco looks forward to working with Congress to resolve these issues even as we continue to meet the challenges in remote, harsh environments like the Navarin Basin.

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Thank you.

Mr. TAUZIN. Thank you, Mr. Criswell.

[The statement of Mr. Criswell follows:]

STATEMENT OF R.J. CRISWELL, DIVISION PRODUCTION MANAGER, AMOCO PRODUCTION CO.

Mr. Chairman and Members of the Subcommittee, my name is R. J. Criswell. I am the Western Division Production Manager for Amoco Production Company. In this capacity, I have responsibility for Amoco's production operations and drilling activities in all or part of ten Western states, including Alaska. These responsibilities include drilling and production within all OCS waters off the Western states.

Amoco Production Company appreciates the opportunity to describe this summer's activities in the Navarin Basin of the Bering Sea offshore Alaska. I will discuss the environment in which we are operating, the scope of our activity, the overall operation itself, and the critical events and decisions which led Amoco to where we are today. Amoco realizes that this Subcommittee's overall objective in these hearings is significantly more broad than what I will discuss. I believe, however, that a good understanding of our Bering Sea operations will help this Subcommittee deal with many of the critical issues before it.

Amoco Production Company is one of the top producers of oil and gas within the United States, and completed more wells than any other domestic operator in 1984. Amoco enjoys a good relationship with our American suppliers, both onshore and offshore, including those in the Gulf of Mexico. This good relationship has continued during periods of industry growth and during the more difficult times like the present, marked by a depressed worldwide oil market and flat prices. We expect this relationship to grow stronger as we continue to emphasize domestic exploration and production.

Oil and gas are international commodities, with prices and supplies determined in an international marketplace. Factors which increase the costs of domestic exploration and production only increase the prices paid by consumers for gasoline and heating oil, encourage the use of imported products, and discourage investment in domestic prospects. All of us appreciate the difficulties faced by Congress in dealing with the realities of this world marketplace not just in oil, but in steel, automobiles, electronic goods, and many other goods and services.

The Outer Continental Shelf is one of the last remaining "frontier" areas where significant amounts of domestic oil and gas could be found. But we face major economic, logistical, safety, environmental, and political challenges in developing these high-cost, high risk offshore areas. I urge Congress to help the industry meet these challenges by resisting further restrictions on OCS leasing and operations, and by rejecting proposals which increase the costs or complexity of offshore activities, especially in isolated and remote areas where specialized equipment is necessary.

Alaska's Navarin Basin is perhaps the most dramatic current example of a high-risk, high-cost domestic area. The industry paid over 631 million dolars in bonuses in April, 1984, to obtain the rights to drill on leases in the Navarin Basin. Amoco, acting individually and jointly with partners, submitted successful bids on 47 tracts offered for lease at that sale. Amoco's commitment alone was over 168 million dollars—more than 25 percent of the total spent by industry—to acquire lease acreage at that sale. The exploratory wells drilled in the Navarin this year are expected to cost 20 to 30 million dollars each.

Industry has demonstrated its willingness to invest these substantial sums because of the belief that major hydrocarbon deposits may exist in the area. If those deposits do not exist, our investments will have been for naught. If we find hydrocarbons, production from the Navarin Basin will be subject to the same challenge we face in our exploration program. Production may or may not be economical, depending in part on development costs, the size of the deposits, worldwide market factors, and the tax imposed. Under the very best of circumstances, production from the Navarin will not reach consumers until the mid 1990's, and full field development program will cost billions of dollars each.

Now I would like to discuss the unique conditions which exist in the Bering Sea. Those conditions were a significant factor in determining the method chosen by Amoco for our 1985 exploration program.

Attachment 1 is a map of the area offshore western Alaska. Of particular importance are the Alaskan port of Dutch Harbor, St. Matthew Island, St. Paul Island, and the Navarin Basin area.

The Navarin Basin area of the Bering Sea is completely unlike any other U.S. offshore area which has been previously explored for hydrocarbons. It lies from 350

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to over 400 miles from the west coast of mainland Alaska, and is one of the most remote and hostile areas offshore America. Suitable port facilities necessary to support any significant exploration and production program are 400 to almost 600 miles away in either Nome or Dutch Harbor, Alaska. Some portions of the Navarin are actually closer to the Soviet Union than to mainland Alaska. Water depths where exploration is currently being conducted range from 400 to 500 feet.

The area represents one of the more hostile offshore areas of the world with respect to sea states, winds, ice conditions, and visibility. At times the area is comparable to the North Sea, with heavy seas and strong storms. Winds of 25 knots or more and 15- to 40-feet seas are common during the spring and fall months.

Ice covers most of the Navarin Basin area for approximately five months per year, typically from December through May. These ice conditions preclude exploration activities during those months.

The area is also plagued with poor visibility caused by rain and fog during the summer months and snow during the remainder of the year. This poor visibility presents a significant logistical and safety challenge affecting operations in the Navarin.

The hostile environmental conditions and the remoteness of the area make operating in the Navarin Basin very expensive, extremely demanding, and totally unlike any other U.S. offshore area. Exploration in the Navarin requires unique approaches and significant amounts of specialized equipment.

As shown on the map, the closest land to the area is St. Matthew Island, approximately 150 miles away. This 100 square mile island is uninhabited by humans and would be an ideal support base for operations in the Navarin Basin. Congress, however, has established St. Matthew Island as a Wildlife Refuge and Wilderness Area. The Interior Department proposed to exchange a portion of the St. Matthew wildlife refuge for a larger area of similar land owned by a group of Alaska natives, but that proposed exchange was declared invalid by the U.S. District Court in Alaska. This decision certainly influenced current operations in the Navarin Basin, forcing industry to use St. Paul Island as a staging area.

Amoco looked at several alternatives in planning its 1985 exploration program. Supplies must be brought into the Navarin by ship, but up to seven days is required for a supply vessel to make the round trip from Dutch Harbor, Alaska, to the drill sites. While supplies can be brought in by ship, helicopters and fixed-wing aircraft are the best ways to transport people in and out of the area. It takes two hours by fixed-wing aircraft to make the one-way trip from Anchorage to the current staging area on St. Paul Island. The industry is using a modified commercial version of the U.S. Army Chinook helicopter to move people from St. Paul Island to the drilling rigs, a 300 mile, three hour trip.

In early June, 1985, Amoco Production Company, as operator for itself and other companies, commenced its multiwell exploratory drilling program in the Navarin Basin.

Amoco's exploration plan, approved by the Minerals Management Service of the U.S. Department of the Interior, includes seven proposed exploratory wells. It is anticipated that three to five wells will be drilled in 1985 and an additional two to four wells will be drilled in 1986.

Depending on initial results, similar levels of drilling activities could possibly occur into the late 1980s. The initial wells are being drilled to total depths ranging from 8,000 to 13,000 feet. Drilling and testing of each well should take from 40 to 100 days.

Drilling in the remote Navarin basin, with harsh weather conditions and a limited drilling season, requires specialized equipment, logistical support, and contingency planning. Amoco concluded early in the planning stages that a largely self-contained operation, with all necessary materials and supplies in close proximity to the drilling rigs, was necessary to assure implementation of its 1985 program.

The safety of our personnel and of the overall operation was one of the most important reasons Amoco chose such a self-contained approach. As previously discussed, the remoteness of the area and logistical difficulties make this extremely critical. Weather in the Navarin can change quickly and a self-sufficient operation can immediately respond to weather conditions. This can greatly facilitate movement of personnel and materials. In the event of well problems, necessary materials and equipment are readily available in close proximity to the drilling rigs.

Another factor affecting the decision was the scope of the planned program. A self-contained operation provided some economies of scale, making Amoco's plans to drill three to five wells somewhat less expensive. Several million dollars was saved by purchasing the majority of the required drilling materials and supplies from Far East locations. However, all of the anticipated cost savings evaporate if fewer wells

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are drilled; in fact, if only one well were to be drilled, a self-contained approach would be substantially more expensive. Thus Amoco's overall drilling plans and the scope of our program greatly influenced the approach chosen.

Amoco has successfully used self-contained operations to support exploratory drilling in other isolated and remote locations in the world such as the Seychelles, Philippines and offshore Oman. The concept has been proven and we have experience within our company using this approach. I addition, we believe that a largely self-contained operation minimizes the possible impact of our operations on the environment and on subsistence activities of the Alaskan people. Finally, it is my personal belief that if St. Matthew Island had been available, a more conventional supply approach could have been used.

Amoco's operation uses two American semi-submersible drilling rigs, the Sedco 708 and the ODECO Ocean Odyssey. Both of these rigs have previously been used in offshore Alaskan waters.

We reviewed our experience with harsh environments throughout the world and assessed the experience of other operators in the Bering Sea. We determined that a fleet of marine vessels was necessary to support the two drilling rigs during the drilling season. First, we needed a floating warehouse—called a wareship—to carry tubular goods, drilling mud supplies, cement, drilling tools, and other equipment needed for the entire 1985 drilling season. A product tanker we needed to carry adequate quantities of drill water, potable water, and fuel oil. Large anchor-handling/supply boats, each with a minimum of 7500 horsepower, were required to move equipment, supplies, fuel, and water to the drilling rigs. Finally, we needed smaller standby boats, equipped for emergency rescue and oil spill cleanup, on location at or near the drilling rigs at all times. Of the eight ships ultimately selected, four are American and four are foreign.

Amoco initially contacted U.S. marine operators with experience in Alaskan waters to provide these vessels. The warehouse and tanker vessels proposed by those operators were generally too small to hold materials for up to five wells, or were not self-propelled, or were not available for timely modification to meet Amoco's requirements. Amoco was able to locate and immediately placed under contract two large American supply boats which met our requirements and had previous Bering Sea experience. We also placed under contract two smaller American boats, equipped to meet our requirements for emergency rescue and oil spill clean up.

Amoco then had to determine how to meet its requirements for a wareship, a tanker, and additional support vessels. It was only after it was determined that foreign vessels could be used under our approach in full compliance with all U.S. laws and regulations that Amoco contracted with a major foreign marine contractor to provide the additional vessels required.

This contractor is a major shipping company with worldwide experience and the technical expertise required to perform our work. The wareship provided is a 63,000 DWT bulk carrier, 739 feet long, and is registered in Singapore. Extensive shipyard modifications, costing more than five million dollars, were required to equip the ship to carry the equipment and materials needed for the 1985 drilling season. The wareship also contains a heliport which can be used for refueling and alternate landing. It has already been used for an emergency helicopter landing when one of the helicopters developed mechanical problems. Emergency medical facilities, staffed by trained personnel, are also available on the wareship, to provide any emergency life-saving attention which might be necessary.

The marine contractor is also providing a 47,000 DWT product tanker, 597 feet long and registered in Denmark. The two foreign supply boats, hired in addition to the two American supply boats, are each over 200 feet long and are registered in Liberia and the United Kingdom. The operation of the wareship, the tanker, and two of the supply boats by a single contractor has simplified overall marine coordination and implementation of the program. The cost of the two foreign supply boats, operating over the entire 1985 drilling season, is approximately 25 to 30 percent lower than comparable costs of the two American supply boats also under contract to Amoco.

The two American supply boats are used to make any transfers between coastwise points as required under the coastwise trade laws. All four of the supply boats are used to move materials from the wareship and tanker to the drilling rigs. Supply transfers involving the wareship and tanker are always conducted while those ships are moving, either at drift or under power. These vessels are able to move into better weather, which allows for a smoother transfer of materials. Although various contractors discussed alternative uses of warehouse ships and barges, including anchoring those vessels, Amoco never intended to use anchored vessels for operational reasons. Under no foreseen circumstances will the wareships and tanker be at

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anchor in the Navarin Basin. The water depths of 400 to 500 feet in the area preclude anchoring these two vessels.

In Amoco's opinion, this particular operating mode is the best, safest, and most reliable method of assuring availability of people and materials in the harsh environment of the Navarin Basin. It is in full compliance with all U.S. laws and regulations. Mr. Theodore Dimitry of the law firm of Vinson and Elkins is here with me to respond to any questions regarding Amoco's compliance with the coastwise trade laws. In addition, all appropriate Customs reporting procedures are strictly followed each time a transfer of materials is made from the wareship or tanker to either of the drilling rigs.

As you can see, the conditions which exist in the Navarin Basin are unlike the conditions which exist anywhere else offshore America. For example, excellent infrastructure and numerous supply bases exist all along the Gulf of Mexico coast. The distances which supply boats must travel in the Gulf of Mexico are comparatively minimal. Amoco has no current plans and does not foresee any need to use foreign flag vessels in any of our operations in the Gulf of Mexico.

As I indicated, industry faces many challenges in finding and producing petroleum in OCS areas like Alaska's Navarin Basin. The industry is dealing with logistical and technology challenges presented by the harsh climate and remote nature of the Navarin. We are also taking the economic risks associated with this extremely expensive undertaking. But we continue to face legal and public policy challenges like suggestions that federal law allow only American ships and supplies to be used in OCS operations. A strong, competitive offshore service industry is certainly a vital part of the American oil industry. But such a requirement could reduce the competitiveness of American OCS exploration and development, and foreign countries might adopt similar restrictions on American operations overseas. We urge Congress to resist any proposals which discourage domestic oil and gas exploration and production by increasing the costs or complexity of offshore activities. Congress should also resist proposals to further restrict federal OCS leasing. Such policies are inappropriate in light of today's international economic situation and the need to assure reasonably-priced, adequate secure domestic oil supplies. Amoco looks forward to working with Congress to resolve these issues even as we continue to meet the challenges presented by nature in areas like the Navarin Basin.

Thank you.

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Attachment No. 1

Navarin Basin Area

Bering Sea Offshore Alaska

Distances From Center Of Navarin Basin Area To:

Cape Navarin	200 Mi.
Dutch Harbor	570 Mi.
St. Lawrence	300 Mi.
St. Matthew	150 Mi.
St. Paul	320 Mi.
Nome	397 Mi.

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Mr. TAUZIN. Mr. Lowry, the gentleman from Washington, you may examine the witnesses.

Mr. LOWRY. Thank you.

I am interested in whether the use of the wareship and the foreign vessels, are unique to the Navarin Basin, or is this a situation we are going to see occurring in many other areas in the Outer Continental Shelf?

Mr. CRISWELL. There are two comments I would like to make. First, in my written testimony I have indicated that Amoco has used this approach in other remote, isolated areas of the world, exclusively overseas up until now. We see no other application for this approach in any of our operations in other American OCS waters. We do not see this as being extended to the Gulf of Mexico. This was not driven by economics; it was driven by the uniqueness of the area and our concern for a safe operation.

Mr. LOWRY. What about the rest of Alaska outside of this particular basin?

Mr. CRISWELL. As we see it today, we do not see this being applicable in the rest of Alaska. I might acknowledge, however, the different areas of Alaska, that is, the Beaufort Sea to the north, which is also an extremely harsh but different type of environment. Other specialized equipment which does not exist under a U.S.-flag today is going to be very necessary—and I think of icebreakers as an example—for near-term effective exploration of those areas. When we deal with frontier areas we are dealing with very specialized equipment.

Mr. LOWRY. Captain Mayberry, I would like to ask you the same question. Do you see this as a procedure that will probably be confined to the Navarin Basin, or do you think the utilization of foreign ships or similar operations may move to other areas of our Outer Continental Shelf?

Mr. MAYBERRY. Certainly when an oil company creates a new scheme, it presents the prospect of it being identified as being economical or useful in other areas. In the Gulf of Mexico more recent finds have been over 200 miles from the mainland. That is 20 hours from the dock. It may very well be, with the weather much more favorable in the Gulf of Mexico, the economics could exist that would allow the foreign warehouse vessel to be resupplied from Mexico. Certainly for the close-in exploration and the regular production work that is already in place, it is unlikely it would occur; but certainly if it is proven economical as well as more convenient, we have to face up to the fact that it could be used by some other company.

In my statement I did identify that often—and I am certainly not trying to infer that it was considered in this aspect of this particular venture—the use of foreign vessels often develops kind of a quid pro quo with the major oil companies being international, exploring for oil throughout the world. It is often—it could be beneficial for them to consider joint ventures in the United States, because it would serve other advantages to them in their further development worldwide.

We are not privy to these things, but certainly the possibility exists and not through just safety aspects and just the economics of

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the program. Other motives could be entertained. I hope that answers your question.

Mr. LOWRY. That is all I have.

Mr. TAUZIN. Thank you.

Mr. Criswell, the lead story in the newspaper—in fact, Lloyd's list—dated Monday the 24th, starts off—

> An ingenuous plan to evade protectionist shipping legislation in the United States has been drawn up by oil company Amoco. If the device succeeds, it could make a fundamental breach in the barrier which stops foreign vessels competing for rate support work in U.S. waters. A huge market worth hundreds of millions of dollars a year, more than a third of the world's regular fleet works off the United States.

In Mr. Lowry's questions he had opened that topic up. What is to stop, not Amoco if it desires not to, but other companies from emulating Amoco's scheme in the Gulf of Mexico and other OCS areas if, in fact, those companies see some economy in doing so?

Mr. CRISWELL. Mr. Chairman, I would suggest, based on our experience in the Navarin with this particular operational approach, where, in order to conduct our operations in a safe and prudent manner, we have been forced to spend over $5 million modifying this ship to be able to handle the materials and supplies, and where we have contracted for and have made a major investment in the one-season use of the foreign ship and tanker, that there are not going to be the type of economics that would lead to or drive this utilization in a place like the Gulf of Mexico or in the places where we have good infrastructure completely around to support the domestic activities.

Mr. TAUZIN. Your question begs the assumption. I made an assumption the company sees some economic advantage in doing it. What is to stop the company from employing this same scheme in the Gulf of Mexico?

Mr. CRISWELL. Under a similar operating scenario, there is nothing that would stop them or drive them to consider it, except the economics of the situation.

Mr. TAUZIN. Let us talk economics. You indicated that there were special reasons why you needed to employ this scheme in the Navarin Basin. Indeed, my colleague from Alaska, Congressman Young, made the point also that St. Matthew island, being unavailable to you, helped drive this decision. In fact, if St. Matthew Island had been available, would you have made this decision?

Mr. CRISWELL. It is my personal opinion we would not have elected to operate this way if St. Matthew Island had been available. We would have had an operational support base within 150 miles that we could have used.

Mr. TAUZIN. The next question is, I suppose, why did you chose to, in using a foreign wareship, also decide to use foreign supplies and wares for the Navarin Basin operations?

Mr. CRISWELL. The decision to use foreign supplies and goods, at least to partially use foreign supplies and goods, was made based primarily on three factors: Availability of the goods, quality of the goods and availability of the ship in a Japanese shipyard for required modifications. It was available in that shipyard when we contracted for it, and it made sense, since the ship was there, to load it with materials.

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Mr. TAUZIN. When you say "sense," did it make economic sense to use foreign supplies and wares?

Mr. CRISWELL. Yes. We were able to save between 25 and 30 percent of the cost involved by purchasing the foreign goods and services.

Mr. TAUZIN. So that other companies at least considering this scheme and its applicability in other OCS areas might indeed also have as part of the calculations, the economies that might be derived from using foreign wares and supplies in addition to whatever other economies might be derived in terms of the operation itself.

Mr. CRISWELL. The cost of the foreign supplies and materials was less, but I think we have to keep in mind that that cost is relative to cost of materials and supplies in an extremely remote part of Alaska. There is tremendous transportation involved in getting materials from the gulf coast or from other areas of the United States to Alaska.

Mr. TAUZIN. How about from California?

Mr. CRISWELL. The cost of materials in California was also less, but there is less differential f.o.b. California than f.o.b. Alaska for those materials.

Mr. TAUZIN. Mr. Criswell, I was delighted at some parts of your testimony, particularly the part that described the harsh conditions in the Navarin Basin. As it relates to your written testimony, where you described the fact Amoco has hired six standby vessels to assist for rescue operations and emergency conditions, I take it Amoco has a policy of employing standby vessels.

Mr. CRISWELL. We made the decision that in a remote environment like the Navarin Basin we wanted emergency standby vessels at or near the drilling rigs at all times.

Mr. TAUZIN. It was an interesting and worthwhile testimony, because others have testified that conditions similar to those you have described were such that the standby vessels would be useless, and yet Amoco is obviously hiring six.

Mr. CRISWELL. The number of six does not reflect standby vessels. That is the total number of marine vessels we have in the Navarin. We have two standby vessels operating in the Navarin——

Mr. TAUZIN. On page 12 of your testimony you say that all appropriate Customs reporting procedures are followed. Does this include the payment of some form of import duty or tariff on foreign supplies and wares?

Mr. CRISWELL. That is correct, it does. We have estimated that the duties that we will pay on the foreign goods will range between $400,000 and $600,000 for this year's drilling program.

Mr. TAUZIN. You also state that the U.S.-flag supply vessels will be used to make the runs between U.S. coastwise points as required by law. How often do you anticipate that type of item being involved and what coastwise points are you talking about?

Mr. CRISWELL. The coastwise point we are talking about is Dutch Harbor, AK, to the drilling rigs and back. We are anticipating we would make a trip to each rig somewhere between once every 7 and 14 days.

Mr. TAUZIN. You did hear this morning the testimony of the Customs officials, specifically, the answer to a question I raised with

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reference to the waiver capabilities of the agency in terms of the Jones Act requirements. The answer specifically was that indeed the agency had the capacity to grant a waiver, if such a waiver application were made and national security, national defense consideration was attributed to the project. I made the question, if indeed some argument could be made that the national defense of the country required the full development of this basin for oil purposes that indeed maybe a waiver could be obtained, the answer was yes.

I suppose the next question is: Why did Amoco choose to set this precedent, which disturbs not only many of us here in Congress but certainly many in the industry who feel threatened by this new precedent? When the possibility of a waiver existed, why was not an attempt made to obtain a waiver?

Mr. CRISWELL. I guess I would start off by saying I do not think we set a precedent by requesting a ruling. Amoco was at risk with our operations in terms of substantial investments. We were at risk in terms of being able to conduct our operations because they were somewhat different than used before. It is my understanding that it is a common practice when companies are doing something somewhat unique to request a clarification or a ruling which basically clarifies the understanding and intent of the law. That is what Amoco did.

Mr. TAUZIN. It certainly was your option and your right. What I am asking is, in terms of what at least you have learned since has been a great concern expressed by many of us, particularly a letter from the chairman of this committee urging Customs to revise its decision and Customs having exactly done that, revised its earlier determinations and ruled that an anchored vessel would be a U.S. point for Jones Act purposes. At that point you then had the option of asking for a waiver seeking further clarification on the theory you would not anchor tne vessel. You chose the latter.

What I am asking is, recognizing the great congressional concern expressed by this committee, by others in the U.S. support industry, why did Amoco at least not make an attempt to seek a waiver from the revised Customs ruling?

Mr. CRISWELL. Mr. Chairman, Amoco never altered our operational approach. We never intended to anchor the vessels in the Navarin Basin. It was our understanding and interpretation of the law that a warehouse ship not at anchor did not become a point in the United States and we sought to clarify that understanding.

Mr. TAUZIN. Obviously, something is amiss here. Obviously, Customs assumed or believed that you were going to anchor that vessel or else Customs would not have made the ruling they made initially and later revised. Could you please explain that.

Mr. CRISWELL. I will defer that question to Mr. Dimitry.

Mr. DIMITRY. Mr. Chairman, there were two letter requests addressed to Customs. There was one which precipitated Customs reply dated December 6, 1984. That request was addressed to Customs by another law firm with whom neither we nor Amoco had any connection whatsoever, had nothing to do with Amoco's proposal. That letter was the one which mentioned the concept of anchoring. Our letter was one which went in on December 19, 1984. At that time we had obtained a copy of the Customs ruling of December 6. However, if you have the copy of that letter, I invite

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your attention to the second paragraph which says that "We understand your ruling of December 6 to apply to a foreign flag floating warehouse vessel which would anchor," et cetera.

The second sentence says, "Our clients are considering the use of a foreign flag floating warehouse vessel which will not anchor or otherwise establish a fixed position."

The only inquiry that Amoco ever made or authorized to be made was one which addressed the concept of a vessel continuing to move. There was never an intent for the vessel to anchor. We did go on to say that if storage of emergency or replenishment supplies from U.S. sources is required at sea, we requested a ruling to the effect that we could establish a point, for example, in the lee of St. Matthew Island or some other identifiable point so that transportation to that point and from that point onward to the rigs could be on U.S. coastwise qualified vessels.

Mr. TAUZIN. I would like you to go through that second part again. You said if U.S. supplies are acquired would you do that again.

Mr. DIMITRY. I invite your attention to page 3 of my letter of December 19. I will read the paragraph if you like.

Mr. TAUZIN. Please.

Mr. DIMITRY [reading]:

> We requested a ruling that if storage of emergency or replenishment supplies from U.S. sources is required at sea, the warehouse vessel may establish a specific point, say in the lee of an island, to which supplies may be brought from U.S. ports aboard coastwise qualified U.S. vessels and from which such supplies thereafter may be transshipped for onward carriage to the oil drilling rigs aboard other U.S. qualified vessels.

Mr. TAUZIN. The obvious question is if, in fact, you were asking for Customs to rule on a situation different from that which they had already ruled, that it was a unique situation, how can you then argue, Mr. Criswell, that you are not asking Customs to set a precedent?

Mr. DIMITRY. May I answer that?

Mr. TAUZIN. Yes, please.

Mr. DIMITRY. If I may, Mr. Chairman, 19 CFR 177.9 says that a ruling letter is subject to modification or revocation without notice to any person except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter.

This was an unusual type of an operation. We could not rely on prior rulings. We were required to obtain a ruling addressed to the Amoco proposal.

Mr. TAUZIN. Was the ruling by Customs in any way restricted to the particular circumstances of the Navarin Basin?

Mr. DIMITRY. The ruling by Customs was requested with respect to the Navarin Basin. I will have to check the letter again to see whether or not we identified it in there. I think we did say Alaska—I am sure Alaska.

Mr. TAUZIN. What I am saying is, that you are saying that the Customs rules indicate that no one can assume that the precedent is established. They have to make a separate request, obviously.

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Mr. DIMITRY. That is correct.

Mr. TAUZIN. What I am asking you, did Customs, in making the ruling, in any way restrict that ruling to the particular circumstances of the Navarin Basin, which prompted you to make the request?

Mr. DIMITRY. The letter addressed operations in the Bering Sea of Alaska. Customs' reply specifically addressed operations in the Bering Sea off Alaska.

Mr. TAUZIN. Then is it your interpretation that Customs has not ruled that such an operation would be permissible anywhere but in the Navarin Basin?

Mr. DIMITRY. No, not at all. As far as I am concerned, the ruling by Customs is that the operation as described is a perfectly legal operation. In strict answer to your question, I would say that legally the operation could be conducted elsewhere in the United States. However, the answer that Mr. Criswell gave you previously is that it is not reasonably practical to duplicate it elsewhere in the United States because the same constraints do not apply.

Mr. TAUZIN. You are answering an economic argument. I was asking a legal one. Is it your legal opinion that pursuant to the ruling you have obtained for Amoco and Customs that a similar operation could be conducted in the Gulf of Mexico?

Mr. DIMITRY. In a strictly legal sense, yes. But I think it is a mistake to view the question in a strictly legal sense, because I think——

Mr. TAUZIN. I didn't ask you to discuss the economics. Therefore, does the Customs ruling serve as a precedent for operations that might be conducted, whether wisely or unwisely economically, in the Gulf of Mexico?

Mr. DIMITRY. I would have to say yes, it would, to the extent that it establishes a theory of operations. But I think if anyone would want to duplicate it, they would be wise to ask for another ruling.

Mr. TAUZIN. Now, on page 9 of your testimony, you indicate U.S. marine operators were contacted to provide both warehouse and the tanker vessels, but were unable to meet the requirements. On page 3 of your testimony, Mr. Mayberry, you indicated that U.S.-flag vessels were available for Amoco's use at less cost. Could you first please elaborate on your statement, Mr. Mayberry?

Mr. MAYBERRY. Yes; I think although the record is probably eminently clear on this, our association never opposed the use of foreign warehouse vessels. It was a concept used elsewhere but a brand new concept for the Continental Shelf, but there was no basis under the law nor did we have any desire to oppose the use of warehouse vessels. Our only concern was the onward movement of equipment from the warehouse site to the drilling site. We felt by being established on the Continental Shelf, either by anchor or in our opinion just being there, the movement of materials and supplies should be done by coastwise qualified vessels. That was our only objection.

If I may, Amoco's statement is fairly generous when it talks about that the use of the foreign supply vessels over the period of years as 25 percent cheaper than similar American equipment, I hesitate to accept that because, quite clearly, the tanker, the freighter and the two supply boats are a package deal undoubtedly

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written as a contract for the use of all the equipment at once. And to just sort out and say, well, the supply boats are cheaper, I find that hard to accept—although I have limited experience in market value, prices and things like that—I have been assured by our membership suitable American equipment was and is available, but they had no opportunity to bid, nor were they fully informed as to the prospect—it obviously had been long in concept.

Mr. TAUZIN. Mr. Criswell, could you describe the process by which you came to the conclusion U.S.-port vessels were not available to service this warehouse and, therefore, you did not use them?

Mr. CRISWELL. Yes; Mr. Chairman, I would be glad to. We developed this plan, this operational approach, over a period of months beginning in mid to late 1984. Part of the development of our plan had us look at Amoco's experience in harsh environments throughout the world. From that, we developed some specifics and requirements for the vessels we wanted operating up there.

We also looked at industry's experience, although limited, in the Bering Sea, offshore Alaska. An operator drilled a COST well in the Navarin Basin several years ago. We spent considerable effort looking at the experience they had in drilling that COST well and the equipment they utilized in drilling it. There had been industry drilling in the St. George's Basin of the Bering Sea, which is South of the Navarin Basin. We looked at industry's experience there, the equipment they utilized, and the results they had by utilizing that equipment.

As we did that, we established certain requirements that we would impose upon ourselves for a safe, prudent, effective operation. We wanted all of our contractors, all of the service companies, and our own people, to have experience in harsh environments. We selected only equipment with that type of experience. We established on the marine supply side some minimum horsepower requirements.

We then solicited from U.S. contractors with experience working in Alaskan waters the equipment that we needed. That equipment typically fell into two categories, the category of the wareship and tanker type of equipment, and the category of the supply boat type of equipment.

Speaking to the wareship and tankers first: The proposals that were made by those U.S. contractors with experience in Alaskan waters typically involved wareships or wareship approaches that were too small to hold the materials for up to five wells, or involved equipment that was not self-propelled—equipment that would either have to be anchored someplace or would have to be pulled around by supply boats, tugs or something on that order. Or we found that the equipment was not available within the timeframe that we faced to have it in a shipyard to be modified for our use. So we were not able to find from those marine contractors with experience in Alaska waters the warship and tanker type of vessels.

On the supply boat side, we did find and immediately contracted for two large American supply boats. We contracted for those before we contracted for any other marine equipment. We also found the two standby boats that we contracted for. The other U.S.-

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flagged American supply boats that were available with experience in the Alaskan waters we judged didn't meet our specifications based on the experience we had seen that those boats had had in the Bering Sea before. So it was only at that point, when we couldn't find the available equipment with experience in the Alaskan waters, that we turned to the foreign contractors.

Mr. TAUZIN. Mr. Mayberry, Mr. Criswell is saying, first of all, the warehouse was special, American contractors offered too small a ship for too inadequate a configuration. He has also said he couldn't find a U.S. tanker ship that could service this operation apparently; and that he could not find enough supply boats experienced in these waters to supply this operation.

Do you concur that that is so, or do you dispute that fact?

Mr. MAYBERRY. I don't have any knowledge of the companies that were allegedly contacted by Amoco. Certainly three is nothing remarkable about either the Singapore flag freighter or the tanker. They were modified to be adopted to this work. I am quite sure that there are American freighters and American tankers that might be available. I doubt that any of my members at least were contacted in reference to even considering arranging subcontracting with the owners of that equipment.

Other aspects of barging and the like have never been addressed to any of my members, to my knowledge, and I must say on the statements as to the supply vessels, we have at least 8 companies that have been active in the Alaskan area. We have over 10 companies that actually began exploration in the North Sea, and their equipment since that time has developed and have been improved and modified for the harsh environment, and their experience in the North Sea, although providing different aspects than what the Bering Sea has, is no less hostile.

We have ably performed throughout the United States, around the world. I don't mean to impugn the testimony in any way, but we can't front-load specifics and specifications and demand the need for 13,000 horsepower, when quite clearly the industry standard can be performed at 7,500 horsepower. I can't suggest that they were artificially used to eliminate equipment, but there is no doubt in my mind that the work in the Bering Sea could be performed and is being performed by American vessels of 7,500 horsepower.

There is currently another operation underway in the exact location where they are using American equipment of 7,500 horsepower and resupplying from Dutch Harbor making 7-day round trips. They have employed three American boats——

Mr. TAUZIN. What company is doing that?

Mr. MAYBERRY. Exxon. They are employing three American boats and have indicated they really don't need the third boat because their resupply is successful.

Now, they are only in a one-well process and not a five or three, or whatever it is, that Amoco considers, and that may alter the circumstances. Certainly there must be a remarkable price on tubulars obtained foreign if the f.o.b. also allows for the payment of $800,000 of duty on this foreign equipment. In fact, maybe somebody could investigate dumping of tubulars on the American market, because these are extraordinary numbers and don't quite hold up when you think about it.

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Thank you.

Mr. TAUZIN. Would you like to respond?

Mr. CRISWELL. Could I make several points of clarification?

Mr. TAUZIN. Sure.

Mr. CRISWELL. First, I would like to address the comment that was made about a package deal with our foreign boats. That comment is erroneous in the sense that although we have contracted for four vessels through one company, each one of those vessels was contracted independently. There is a separate contract which exists on each of them, and that contract and the financial terms therein, were negotiatd on a stand-alone contract-by-contract basis. So it was not "a package deal."

The second point of clarification is that with the significance of Amoco's operations out there from a marine support standpoint, we felt that it was very important to try to have as much coordination of this marine equipment as we could. The one contractor brought us that. In no way do I want to imply that Amoco went out on the U.S. market looking for a tanker from somebody that deals strictly in tankers. And in no way did we go out on the market looking for strictly a bulk carrier over here from a shipping company that has nothing but bulk carriers.

We went to marine contractors that were familiar with the drilling industry, that were familiar with the drilling of exploratory wells and the supporting of those wells, looking for the required marine equipment. So we did not solicit a contract with a tanking company for that single piece of equipment, but we did solicit from the U.S. marine service industry, the equipment that we would need to effectively manage and conduct our program.

Mr. TAUZIN. Thank you, gentlemen.

Mr. Criswell, let me make a comment at this point, and I hope you take this for the purposes it is made. As I see it, there are really two things that have occurred here. One is the introduction of a foreign-flagged wareship into the OCS, and the second is its introduction under circumstances that permits Customs to allow its servicing through these supply boats, also with foreign-owned flag vessels rather than with coastwise certified vessels. There are really two issues here.

First is whether or not a wareship of the character being introduced into the Navarin Basin should be introduced there or anywhere else into the OCS, and the law very clearly authorizes that.

Secondly, whether it ought to be introduced in a fashion that permits foreign-owned-flagged vessels to service that warehouse operation. It is the second of those two which most disturbs many of us who have and continue to express some group concerns about the precedents established here.

If, in fact, it were not a legal precedent for others to look to and possibly devise similar schemes in other areas of the OCS, I would for one not be very concerned about it. I understand that you may have some special circumstances there that require this particular type of operation. Although, like Mr. Mayberry, even in the Navarin Basin area, I find it very difficult to believe that American supply boats that currently service Exxon and other companies in the same area could not be used for this operation. But I admit that is a point of legitimate difference of opinion.

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Mr. CRISWELL. Could I interject something there?

Mr. TAUZIN. Please.

Mr. CRISWELL. The other operators that are either currently operating up there or plan to operate up there this year have relatively small programs compared to Amoco. The scope of their operations is completely different than the scope of our operations. We have at most a 7-month drilling season. In the fall, toward the end of that drilling season, the weather deteriorates fairly significantly as storms come through, and sea conditions get very bad.

The scope of Amoco's drilling program has us potentially operating up there from the earliest part of that drilling season throughout the entire drilling season until we are driven away by ice encroaching from the North. So as we looked at it and put together our operational plan, we had to look not only at the period of June and July and early August, when weather conditions are at their best on a relative basis, but also at the period late August, September, October, and November, when those conditions detriorate significantly. So although an operator may be very effective today with a certain supply boat moving materials back and forth, that doesn't mean that same boat or that same operator is going to be effective in completely different sea states, completely different environmental conditions three or four months from now.

Mr. TAUZIN. That may be so. Again, I admit that there is some possibly very good places for legitimate differences of opinion on that score. But it is also clear that the American policies expressed in the OCS Lands Act, by which I and other Members of Congress support offshore mineral development and through which the Interior Department does, in fact, conduct an offshore leasing program conducive to that mineral development for our Nation's energy supplies, it is part and parcel of that program congressional intent was, and I quote from the statement of the managers: "to provide the fullest possible employment for Americans in the U.S. Outer Continental Shelf activities."

We are not doing too good a job in this country of protecting American jobs against unfair foreign competition. I would like to see us do more, not to protect us against our inefficiencies but the unfairness of foreign competition. At least in this one area, Congress has clearly said when it comes to developing the American OCS that one of our stated goals was indeed to provide for the fullest possible employment for Americans in that OCS activity.

Granted this may be a special case and granted this member and others may equally support requests for a waiver from applicable Jones Act provisions in this case, and indeed you may make that case by some of the arguments you made today. To establish in your body of precedents as a result of this special circumstance a condition that may lead others, given other economic considerations, to similar activities in other areas of our OCS derogates, I think, dramatically from the congressional purpose set out in the OCS Lands Act by which these mineral developments and your corporation are participating in indeed the development activities. There are a lot of implications here.

The question of whether there are going to be moratoriums, you mentioned the fact Amoco is facing that battle, I face it side by side with you, whether in the Tax Code the U.S. Government will

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continue to support tax incentive for companies to do drilling on our own lands and water bottoms. I think all relate to the importance of those activities to the employment of U.S. citizens, as clearly stated in the statements of the managers of the act. If that relationship should begin to diminish, particularly in big operations such as yours, and should that example be followed by others to the point where that relationship between the support for OCS lands activities and policies that support the OCS become weakened less than it has been, our whole program for development could be somewhat damaged.

I am concerned from the statement, for the economists, again in a very parochial way—I realize you have tried to give me assurances that economies will not encourage anybody else to do that in the Gulf of Mexico, but I remain concerned. I have to be; when Mr. Roberts on channel 6 in New Orleans started talking about hurricanes, I asked him to come look at the depressions inland in the oil and gas path.

Much of the economy in our State in the coastal area is connected to supplying the OCS activities. If we were to lose that and lose the relationship of those jobs and the economy, I am seriously concerned about the kind of support that activity would continue to enjoy in the halls of Congress and in our state legislatures where we have indeed encouraged OCS development.

So while I thank you very much for elaborating and clarifying the special circumstances of this Navarin Basin activity and while you can assure Amoco and others like Amoco, they continue to enjoy the support of this member in their OCS activities and in the development of the OCS. I remain greatly concerned about the precedents we set in this circumstance and would much prefer if this thing could be resolved in a special circumstance, perhaps exception to the Jones Act provisions. Barring that, this full committee will certainly have to look at what might be obtained by way of congressional restatement of the law in the area. It is of that grave a concern to many of us.

Again, I thank you for your very candid description of the circumstances for us today. Mr. Dimitry, thank you for your legal contributions. Mr. Mayberry, I thank you also for your continued concern, which you know is shared by many of us with regard to this circumstance. We thank you all for your attendance.

I think that concludes the panel, and without objection, the meeting stands adjourned.

[Whereupon, at 3:40 p.m., the subcommittee was adjourned subject to the call of the Chair.]

[The following was submitted for inclusion in the record:]

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R. J. Criswell
Division Production Manager

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AUG 8 1985
COMMITTEE ON MERCHANT MARINE AND FISHERIES

August 2, 1985

Hon. Walter B. Jones
Chairman
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
1334 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of July 25, 1985, requesting additional information as a result of my July 23 testimony before the Subcommittee on Oversight and Investigations.

You asked about the extent of discussion of the use of wareships, barges, or supply vessels in Amoco's Exploration Plan, which was submitted to MMS on January 25, 1985. That plan consists of three parts: A general operational description, an environmental report, and an oil spill contingency plan.

The latter two documents outline and evaluate possible impacts and risks associated with Amoco's operational plan involving the use of two semi-submersible rigs, a wareship, a supply tanker, four supply vessels, and two standby boats. The environmental report describes possible sources of air emissions from operation of these vessels, and indicates that the wareship will be "under power and navigating approximately 50 percent of the time". Of that 50 percent, three-fifths (30% of the total operation time) will be spent transferring supplies while steaming at low speed, and the remainder (20% of the total operation time) spent steaming between locations at a higher rate of speed. The tanker was expected to be under power and navigating approximately 30% of the time. Both of these ships were expected to drift "on hold" during the remainder of the operational time, not "under power and navigating" and not transferring supplies.

The oil spill risk evaluation assesses potential risks from any contingent operations which could be anticipated at the time the evaluation was prepared. One contingency evaluated was the possibility of moving the tanker to the lee of St. Matthew Island

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during inclement weather, and transferring fuel at that location. The assessment reviews the possible environmental effects and points out that "proceeding to the lee of St. Matthews (sic) for transfer during heavy weather entails additional risks in transit and a risk of grounding. There is also a risk of hose-break spills during transfers." After reviewing the minimal risk of such events occurring, the assessment outlines mitigation measures which Amoco is taking to further reduce the probability of those risks. It also notes the unlikeliness of any fuel transfers occurring while the tanker is in the lee of St. Matthew island.

Although Amoco reviewed several possible scenarios and possible impacts as part of the risk evaluation process, Amoco never anticipated anchoring any vessel for operational reasons. As I indicated in my testimony, water depths in the Navarin preclude anchoring the vessels which we are using.

Please let me know if you need additional information.

Sincerely,

R J Criswell

R. J. Criswell

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STATEMENT OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

The American Association of Port Authorities (AAPA) welcomes the opportunity to comment on the U.S. Customs Service's efforts to establish an automated cargo processing system. Founded in 1912, AAPA counts in its Corporate membership public seaport agencies throughout the Western Hemisphere, including virtually all port authorities in the United States.

In 1983, AAPA formed a Special Committee on Customs Facilitation Procedures. Ms. Linda Watson (Port of New Orleans) and Mr. Joe Scroggins (Port of Houston) currently serve as co-chairpersons of the Special Committee. The Special Committee was established to work with Customs officials on a variety of issues critical to the port industry, to analyze Customs' new procedural programs, and to make recommendations to AAPA on an industry position regarding these programs or other important Customs issues. The Special Committee has been actively involved in the following areas: Customs new automated clearance procedures, including confidentiality of information; international trade documentation; automated service centers; and Customs staffing and funding levels.

In general, AAPA supports the efforts by Customs to expedite or "facilitate" the processing of imported cargo through the development of automated systems. That includes in particular the Automated Manifest Module which will allow any carrier, port authority, or service center to electronically exchange data with the Customs central computer, and is part of a larger Customs system, the Automated

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Commercial System (ACS). Once operational, the Automated Manifest Module will expedite cargo release procedures, alleviate the burdensome filing of discrepancy reports, standardize manifest reporting requirements, and improve accountability for imported cargo. Benefits should flow to all parties--Customs, carriers, ports, and shippers, with each realizing multiple returns from actions undertaken by the others. But to make this happen, a participating port authority will have to commit a sizable investment in ACS (e.g., compatible computer equipment and software). Such port investments make imperative a joint port industry/Customs effort to expedite plans for ACS.

At Customs' request, the National Council for International Trade Documentation (NCITD) has formed a U.S. Customs/Industry Automated Manifest Committee for the purpose of studying the impact and design of a standardized automated inventory control program and the ACS service center concept. In addition to Customs and various U.S.-flag carriers, the committee is composed of representatives of several port authorities, viz: Georgia Ports Authority, the Port of Long Beach, the Port of Los Angeles, the Port of New Orleans, The Port Authority of New York and New Jersey, the Port of Portland, the Port of Seattle, and the Virginia Port Authority. Moreover, as described previously, AAPA itself has formed a Special Committee on Customs Facilitation Procedures, which aprises AAPA members on relevant Customs issues and also provides a channel of communication between the port industry and the agency.

To date, these joint efforts have been positive and there is the potential for significant achievements in the future. However, the port industry has expended

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large sums in pursuit of the computerized ACS service center concept. That investment cannot continue without a more workable and definitive policy statement by Customs on what role port authorities should play as ACS compatible community service centers. AAPA believes that the following changes and clarifications are needed to provide the industry with an acceptable policy directions.

Definition of a Port Authority Service Center. Customs should clarify its definition of "Port Authority Service Center" if it expects the port authorities to finance the purchase of expensive computer equipment to help the agency expedite the movement of cargo. Customs has traditionally defined a service center as any entity that provides computer interface capability with the ACS or Automated Broker Interface (ABI) systems. Customs indicates it wants to refine that definition by requiring that a computer system must offer both ACS and ABI, and also carry a minimum volume of transactions for the system's port community clients. Stated another way, a port desiring to receive electronically transmitted manifest data from Customs must do more than offer the capability to transmit ABI or ACS information; it must have an acceptable level of support from the community.

Release of Manifest Information. Customs' present policy, as AAPA understands it, provides that a port authority interfacing with ACS through a community service center would be entitled to receive manifest data for that port from Customs. That contrasts with a previous Customs position that the release of manifest data to a service center port would be contingent upon the approval of the affected carriers. Such a policy change would be of critical importance to port authorities and should be clearly set forth in a revised statement.

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Automated Manifests. Regarding the release of automated manifests, Customs has stated publicly that it will relay back to a port service center data pertinent to that port which it has received electronically from automated carriers. However, it will not relay back manifest information electronically received from a service center. Thus it would be up to the service center to retrieve the pertinent information once it relays manifest information to Customs on behalf of a carrier. Furthermore, Customs will not be entering non-automated manifests into the system. This position has been expressed verbally; it should now be addressed in a written policy statement so as to avoid confusion and misunderstanding.

Release of U.S. Importer/Foreign Exporter Information. Customs has stated that it would release electronically received manifest to participating port service centers. Excluded from the released manifests, however, will be the names of U.S. consignees and foreign exporters and all company address information. AAPA's understanding is however that while importers/exporters may request confidentiality as to the release of their names, the data fields actually fall within the public domain. Customs has stated, nevertheless, that it cannot effectively screen those fields, deleting the confidential data and releasing only the non-restricted information. If, however, the screening can be done electronically, Customs has said it would consider transmitting these fields to port service centers.

AAPA's Customs Facilitation Committee understands and respects Customs' position on confidentiality. But the significant port investment committed in establishing an ACS-compatible computer operation has in part been predicated by the potential benefits of such data for port marketing and trade development efforts.

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The AAPA Special Committee is willing to work with Customs in developing a means for releasing non-confidential U.S. consignee/foreign exporter data fields. Specifically, we propose that the importer identification (IRS) number be used by Customs as the screening criterion. Not all importers have an IRS number. But, it is our understanding, a company large enough to be concerned with confidentiality would in most cases, if not all, also have an IRS number.

Regional Versus National Systems. AAPA acknowledges Customs' enforcement concerns. The port industry is nevertheless concerned by the agency's decision to develop a single national system rather than a number of regional systems. A regional program, AAPA believes, could be implemented more quickly and would also be more responsive to the needs of specific geographic areas. Furthermore, regional systems would alleviate some of the apparently unaddressed problems arising from a national system without any planned backup capability.

Customs Policy on Manning. AAPA would like to address one additional area of critical importance to U.S. public ports--the allocation of Customs inspection personnel. Some U.S. ports, especially those that have recently experienced substantial growth in cargo volumes, are experiencing serious delays in cargo processing. However, the allocation of Customs personnel affects U.S. ports differentially; not all ports face such critical shortages in Customs staff. In order for port managers to plan for future growth with a high level of predictability in the ability of Customs to process future cargo flows, it is necessary that Customs clearly define its policies regarding the allocation of inspection personnel. Moreover, it is critical that, while Customs is in the process of much-needed automation of its

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clearance procedures, Customs' current manual cargo clearance procedures with adequate staffing not be deemphasized. It is of obvious importance to the U.S. port industry and to U.S. international waterborne trade that cargo move efficiently through U.S ports during the period when future cargo clearance procedures are being put in place.

CONCLUSION

AAPA believes that these concerns should be addressed before port authorities can be expected to proceed with further development of ACS-compatible service centers. Definitive action is needed to further enable port authorities to evaluate the potential benefits of such a system to individual port communities. Accordingly, it is essential that Customs develop a revised policy statement, one pertaining specifically to ports acting as service centers, which formally defines the Customs Service's commitment to ACS, particularly the Automated Manifest Module.

Port authority service centers will benefit both U.S. Customs and the maritime industry. AAPA is fully prepared to assist in whatever way possible in the development of such a system or in the release of a revised Customs policy statement.

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SUMMARY OF THE ADMINISTRATIVE WAIVERS

OF NAVIGATION LAWS ADMINISTERED BY THE CUSTOMS SERVICE

UNDER THE ACT OF DECEMBER 27, 1950, 64 STAT. 1120 (T.D. 53646)

FEDERAL AGENCY*	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
1. Commerce	To Waive requirement of 46 U.S.C. 496 that SS MUNCIE VICTORY have Coast Guard In spection Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	2/14/51
2. Commerce	To waive requirement of 46 U.S.C. 496 that SS AMASA DELANO have Coast Guard Inspection Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	2/19/51
3. Commerce	To waive requirement of 46 U.S.C. 496 that SS WALTER M. CHRISTIANSEN have Coast Guard Inspection Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	2/21/51
4. Commerce	To waive requirement of 46 U.S.C. 496 that SS FRANCIS A. RETKA have Coast Guard Inspection Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	3/5/51
5. Commerce	To waive requirement of 46 U.S.C. 496 that SS CHARLOTTE P. GILMAN have Coast Guard Inspection Certificate at time of documentation.	Until Certificate of Inspection Issued by Coast Guard	3/6/51
6. Commerce	To waive requirement of 46 U.S.C. 496 that SS PAUL DUNBAR have Coast Guard Inspection Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	3/6/51
7. Commerce	To waive requirement of 46 U.S.C. 496 that SS WILLIAM S. HALSTEAD have Coast Guard Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	3/9/51

*NOTE: When Department of Defense (DOD) stated waiver deemed necessary in inte: of national defense, waiver is mandatory under Act of December 27, 1950, and on: DOD listed even though other federal agencies submitted comments. When waiver granted without such a statement by DOD, waiver granted by Treasury (Customs) u: Act of December 27, 1950, (federal agency listed is most interested of federal agencies submitting comments).

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
8. Commerce	To Waive requirement of 46 U.S.C. 496 that SS WINTHROP L. MARVIN have Coast Guard Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	3/9/51
9. DOD	To waive requirement of 46 U.S.C. 883 to permit the Mexican vessel PACO to transport material between California and Nicolas Island for the construction of an airstrip	Until September 1, 1951	6/15/51
10. Commerce	To waive requirement under 46 U.S.C. 496 that SS MARINE ANGEL have Coast Guard Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	6/26/51
11. Commerce	To waive requirement of 46 U.S.C. 496 that SS MARINE STAR have Coast Guard Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	6/26/51
12. Commerce	To waive requirement of 46 U.S.C. 496 that SS MARINE ROBIN have Coast Guard Certificate at time of documentation	Until Certificate of Inspection Issued by Coast Guard	6/26/51
13. DOD	To waive the [illegible]gation laws to the [illegible]ent necessary to permit the operation of vessels requisitioned by the U.S. for emergency evacuation	T.D. 52886, dated December 18, 1951	12/18/51
14. DOD	Waiver of 46 U.S.C. 883 to permit Honduran JOSIE to transport equipment from Green Cove Springs, Florida, to Aguadilla, Puerto Rico and return	To terminate on November 1, 1953	2/16/53
15. DOD	To permit the issuance of a provisional register to a steel barge No. 751 without the usual expiration limit of 6 months from date of issue	To expire in 6 months from date of issuance	9/22/53

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
16. Commerce	To waive requirement of 46 U.S.C. 496 to permit the documentation of SS MEMPHIS before issuance of a Coast Guard certificate of Inspection	Until Certificate of Inspection Issued by Coast Guard	9/24/53
17. Commerce	To waive requirement of 46 U.S.C. 496 to permit the documentation of the SS. MISSOURI before issuance of a Coast Guard Certificate of Inspection	Until certificate of inspection issued by Coast Guard	9/24/53
18. Commerce	To waive 46 U.S.C. 496 to permit the documentation of SS CORAL SEA before issuance of a Coast Guard certificate of inspection	Until Certificate of Inspection Issued by Coast Guard	9/24/53
19. Commerce	To waiver 46 U.S.C. 496 to permit the documentation of the SS KOKODA before issuance of a Coast Guard Certificate of Inspection	Until Certificate of Inspection Issued by Coast Guard	9/24/53
20. DOD	Waiver of laws relating to clearance of certain MSTS vessels	T.D. 53449 effective on or after April 15, 1954	3/8/54
21. DOD	Waiver of 46 U.S.C. 289 and 46 U.S.C. 883 to permit transportation of Navy and Commerce personnel and merchandise on foreign-flag vessels operated by Hamilton Bros. Produce Co. between Swan Island and ports in the District of Tampa, Florida		6/3/54
22. DOD	Waiver of navigation laws to permit Mexican registered vessels under charter to MSTS to make voyages between Brownsville, Texas, and Tampico, Mexico, including the laws relating to the carriage of steerage passengers	Until termination of MSTS charter; vessels to carry no more than 1,000 male citizens of Mexico on each voyage. Terminated July 30, 1954, (See Order dated August 29, 1955).	7/30/54

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
23. DOD	Waiver of 46 U.S.C. 316 to permit towing of certain pontoons by Canadian vessel from Cornwall, Ontario, to bridge site in New York	One voyage	11/9/54
24. DOD	Waiver of 46 U.S.C. 292 to permit any Canadian-built barge to engage in dredging operation on the U.S. side of International Boundary in connection with St. Lawrence Seaway Project	T.D. 53668. Waiver revoked September 7, 1955	11/15/54
25. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tugs to tow and support equipment owned by A.S. Wikstrom, Inc., in American Waters in the vicinity of Barnhart Island to American waters adjacent to construction work being carried out by New York State Power Authority in the St. Lawrence River	T.D. 53785 waiver to remain in effect until June 1, 1955	4/22/55
26. DOD	Waiver of 46 U.S.C. 316 to permit the use of Canadian vessels in towing barges owned or chartered by Dwight W. Winkelman Co., Inc. between Oswego and Grass River cofferdam site, a part of the St. Lawrence Seaway Development Project and between Buffalo and the same site	T.D. 53790. Waiver effective until June 1, 1955	5/4/55
27. DOD	Waiver contained in T.D. 53785, dated April 22, 1955 extended until October 1, 1955 (see number 25 in this list).	T.D. 53811. Waiver contained in T.D. 53785 extended until October 1, 1955	5/31/55
28. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tug RADEL to tow barge of Badgett Mine Stripping Corp. from ogdensburg, New York, to construction site in St. Lawrence River on or about June 9, 1955.	T.D. 53817. For one voyage on or about June 9, 1955	6/8/55

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
29. DOD	Waiver of 46 U.S.C. 289 316, and 883 to permit Canadian vessels to engage in activities covered by those statutes in construction of Iroquois Central Dam. Waiver granted in T.D. 53668 revoked (see number 24 in this list).	T.D. 53892	9/7/55
30. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tug RADEL to tow barge from Ogdensburg to Long Sault Island for work in connection with the Long Sault Dam on the St. Lawrence River	T.D. 53949. Waiver for one voyage on or about November 20, 1955	11/17/55
31. DOD	Waiver of 46 U.S.C. 316 to permit The Canadian tug NEWPIE QUEEN to tow an American barge with construction equipment for work on the Galop South Channel in the St. Lawrence Seaway, on a single movement from Lyons, New Yor, to Oswego, New York; the Canadian tug SALVAGE PRINCESS to tow an American barge on a single movement from Oswego, New York, to Clayton, New York; and the Canadian tug NEWPIE QUEEN to tow an American barge on a single movement from Clayton, New York to Ogdensburg, New York	T.D. 53958. Waiver for a single movement on or about November 23, 1955	11/23/55
32. DOD	Waiver of navigation laws, including those governing carriage of steerage passengers, to permit vessels of Mexican registery under charter to MSTS to transport not to exceed 1,000 Mexican nationals per vessel between Brownsville, Texas and Vera Cruz, Mexico during period of January 1 through June 30, 1956.	Waiver from January 1, 1956 through June 30, 1956	12/30/55

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
33. DOD	Waiver of 46 U.S.C. 316 to permit the Canadian tug HARBOR MASTER to tow a carfloat from Cornwall Canal Dickinson Landing and the Canadian tug HARBOR MASTER and the Canadian tug NEWPIE QUEEN to tow the carfloat from Dickinson Landing to Ogdensburg	T.D. 54100 Waiver for two specific movements	6/1/56
34. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tug HARBOR MASTER, RADEL, NEWPIE QUEEN, and SALVAGE PRINCE, to tow three barges from Hawkins Point, New York, to Alexandria, Bay, New York	T.D. 54107. For one voyage	6/14/56
35. DOD	Waiver of navigation laws governing carriage of steerage passengers, to permit vessels of Mexican registery under charter to MSTS to transport not to exceed 1,000 Mexican nationals per vessel between Brownsville, Texas and Vera Cruz, Mexico, during period of July 1 through December 31, 1956	From July 1, 1956, through December 31, 1956	6/25/56
36. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tugs HARBOR MASTER and RADEL to tow barge from mouth of Grass River in U.S. through the Cornwall Canal in Canada and return to the Massena Power Canal in the U.S. on one voyage to commence on or about July 9, 1956.	T.D. 54128. For one voyage	7/6/56
37. DOD	Waiver of 46 U.S.C. 316 to permit the Canadian tug HARBOR MASTER to tow the Tecon Corporation undocumented barge No. 55 from Clayton, New York, to Stony Crest Island, New York, on one voyage to commence on or about September 27, 1956	T.D. 54203. For one voyage	9/26/56

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
38. DOD	Waiver of 46 U.S.C. 316 to permit the Canadian tug SALVAGE PRINCE and SALVAGE QUEEN to tow barge American barge SANBOW from Long Sault Island to Ogdensburg on one voyage to commence on or about October 25, 1956	T.D. 54226 For one voyage to commence on or about October 25, 1956	10/23/56
39. DOD	Waiver of navigation laws to permit the JOSEPH H. MORAN II to engage in the coastwise towing from Jacksonville, Florida, to San Juan, Puerto Rico, notwithstanding the restrictive endorsement on the vessels' document on or about October 17, 1956 for one voyage	For one voyage on or about October 25, 1956	10/17/56
40. DOD	Waiver of 46 U.S.C. 289, 292, 316, and 883 to permit Canadian vessels to engage in activities covered by those statutes in construction of Cornwall South Channel Bridge	T.D. 54230. During construction of Cornwall South Channel Bridge	10/26/56
41. DOD	To permit tug JOSEPH H. MORAN to engage in coastwise towing notwithstanding restrictive endorsement on vessels' document on one voyage from Jacksonville to San Juan on or about November 1, 1956	For one voyage	11/1/56
42. DOD	To permit tug JOSEPH H. MORAN to engage in coastwise towing notwithstanding restrictive endorsement on vessels' document between continental U.S. ports and Puerto Rico for a period of 60 days from November 23, 1956	For a period of 60 days from November 23, 1956	11/29/56
43. DOD	Applicable navigation laws waived to permit oil screw CAPTAIN MARTIN to arrive and depart from points in the U.S. without reporting arrival, entering, clearing, or receiving and delivering permits to proceed and manifests while engaged in St. Lawrence Seaway Project	While engaged in St. Lawrence Seaway and Power Project	2/26/57

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
44. DOD	Applicable navigation laws waived to permit dump scows No. 29 and 918 to arrive at and depart from points in the U.S. without reporting arrival, entering, clearing, or receiving and delivering permits to proceed and vessel manifests when engaged in the Galop Island segment of the St. Lawrence Seaway and Power projects	While engaged in the Galop Island segment of St. Lawrence Seaway and Power Project	5/28/57
45. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tug RADEL to tow barges VIRGINIAN No. 1 and VIRGINIAN No. 2 owned by A.S. Wikstrom for one movement from Ogdensburg to a point on the St. Lawrence River at or near Massena on or about May 31, 1957	For one movement	5/31/57
46. DOD	To permit the Canadian tugs NEWFIE QUEEN, RADEL, HARBOUR MASTER No. 1, Canadian crane scow M & H SALVAGER, Canadian scow WOLFE ISLANDER No.1, Canadian scow 126, and Canadian sand dredge S.M. DOUGLAS, to engage in dredging, the coastwise trade, including towing, and to arrive at and depart from points in the U.S. without reporting arrivals, entering, clearing or receiving and delivering permits to proceed and vessel manifests when operated by Arnold M. Diamond, Inc., in construction of the Thousand Islands section of the St. Lawrence Seaway ranging from Clayton, New York, down stream 14 miles to a point below Alexandria Bay	During construction of Thousand Islands section of the St. Lawrence Seaway	6/11/57

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
47. DOD	Navigation laws waived to permit the oil screws JOHN F. DREWS, CAPTAIN PETE, and CHARLOTTE, SEAGUL, 7J740, 7J602, operated by Merritt-Chapman & Scott Corporations, when engaged in the St. Lawrence Seaway and Power Projects in the St. Lawrence River at and near Sparrowhawk Point, New York and Toussaints Island, Canada, to arrive at and depart from points in the United States without reporting arrival, entering, clearing, or receiving and delivering permits to proceed and vessel manifests	When engaged in St. Lawrence Seaway and Power Projects at or near Sparrowhawk Point, New York and Toussaints Island	6/28/57
48. DOD	Waiver of 46 U.S.C. 316 to permit Canadian tug HARBOR MASTER to tow barge from Massena to Ogdensburg on one movement	For one movement	7/29/57
49. DOD	Waiver of 46 U.S.C. 40, 221, and 276 to permit employment of noncitizens as master without loss of status as vessel of the United States and to permit employment of such persons without endorsement on outstanding document of oil screw BEAVER STATE, while employed in Amherstburg, Ontario, channel project	While employed in Amherstburg, Ontario channel project	7/30/57
50. DOD	Waiver of 19 U.S.C. 1433 and 1434 and 46 U.S.C. 91 and 92 for vessels operated by Merritt-Chapman & Scott Corporation while engaged in construction St. Lawrence River Bridge at Ogdensburg, New York	Incident to construction of St. Lawrence River Bridge at Ogdensburg, New York	8/20/57

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
51. DOD	To waive entry & clearance requirements for certain workboats on St. Lawrence Seaway Project	While engaged on project	2/11/58
52. DOD	To waive 46 U.S.C. 316 to permit named Canadian tugs to tow barges coastwise between specified points		5/22/58
53. DOD	To waive 46 U.S.C. 316, 883 to permit named Canadian tug and scow to operate coastwise between specified points	Waiver #53 revoked	6/12/58
54. DOD	To waive 46 U.S.C. 289, 883 to permit certain foreign vessels to transport personnel and equipment of Weather Bureau and CAA coastwise	Period of 1 year	8/12/58
55. DOD	To permit named Liberian vessels to transport military cargo and personel between specified coastwise points	Period of 2 years	12/9/59
56. DOD	To waive entry requirements for certain vessels dredging in Canadian waters	Period of 1 year	12/30/59
57. DOD	Same a #56 but for certain other vessels	Period of 1 year	5/6/60
58. DOD	Same as #56 but for certain other vessels	Period of 18 months	6/28/60
59. DOD	Same as #56 but for certain other vessels	Period of 17 months	7/1/60
60. DOD	Same as #56 but for certain other vessels	Period of 1 year	7/7/60
61. DOD	To waive 46 U.S.C. 316 to permit certain Canadian tugs to tow certain barges between U.S. points coastwise	For 1 voyage	11/9/60

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRAN
62. DOD	To waive 46 U.S.C. 316, 883 to permit certain Canadian tugs and barges to transport merchandise between specified coastwise points	For 12 movements during Dec. 1960	12/2/60
63. DOD	Same as #56 but for certain other vessels	Period of 9 months	1/31/61
64. DOD	Same as #56 but for certain other vessels	Period of 14 months	4/26/61
65. DOD	Same as #56 but for certain other vessels	Period of 1 year	5/12/61
66. St. Lawrence Seaway Development Corp.	Waive 46 U.S.C. 316 to to permit specified tug to move between worksites on St. Lawrence River	August 10, 1961	6/5/61
67. DOD	Same as #56 but for certain other vessels	Period of 11 months	7/14/61
68. DOD	Extension of #55 for 2 years	Amended to add another coastwise port	11/13/61
69. DOD	Waiver of 46 U.S.C. 289, 292, 316, 883 to permit certain Canadian vessels to dredge at specified point on St. Lawrence		3/19/62
70. DOD	Waiver of 46 U.S.C. 289, 883, to permit specified foreign vessels to transport military cargo and personnel coastwise	Period of 90 days. T.D. 55787.	12/18/62
71. DOD	Waiver of 46 U.S.C. 292 to permit specified foreign vessels to dredge on project in Niagara River		1/4/63
72. DOD	Waiver of 46 U.S.C. 883 to permit foreign vessels to transport sulphur for Texas Gulf Sulphur Co. between coastwise points	Period of 9 months or until U.S. vessel becomes available but no more than 100,000 tons. T.D. 55856.	3/15/63
73. DOD	Same as #55, extended for 2 years	Deleting 1 specified vessel and adding 1 specified vessel	6/18/63

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANT
74. Interior	Waiver of navigation laws to permit transportation by foreign vessel of oil drilling equipment to Alaska	Period of 60 days	7/30/63
75. DOD	Waiver of entry requirements for certain vessels arriving from Canada in dredging operations	Period of 1 year	8/16/63
76. DOD	Waiver of 46 U.S.C. 289, 883 to permit a specified foreign vessel to transport Government cargo and personnel between U.S. and Swan Island	1 voyage. See #54.	11/8/63
77. Interior	Waiver of certain navigation laws to permit coastwise transportation of oil drilling equipment	In connection with #74	2/6/64
78. DOD	Waiver of certain navigation laws to permit use of undocumented vessel in coastwise trade	For period of 1 year, or termination of MSTS charter, whichever is first	3/30/64
79. DOD	Waiver of certain navigation laws to permit 2 foreign-built hovercraft operate in San Francisco Bay	Period of 20 months	9/18/64
80. DOD	Waiver of 46 U.S.C. 289, 883 to permit foreign vessels to transport cargo and passengers Florida and Puerto Rico	Period of 2 years, 8 months for 1 vessel. Period 2 years, 2 months for 2 vessels	8/2/65
81. DOD	Waiver of 46 U.S.C. 883 to permit foreign vessel to transport vessel parts	1 voyage	8/3/65
82. DOD	Waiver of 46 U.S.C. 221 to permit movement of certain vessels of U.S. not under command of U.S. citizen		2/11/66
83. DOD	Waiver of 46 U.S.C. 289, 883 to permit 2 foreign-built hovercraft to operate in oil drilling activities in U.S. waters	Period not to extend beyond June 1, 1968	3/28/66

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84. DOD	Waiver of 46 U.S.C. 289, 883 to permit specified foreign vessel to carry cargo and passengers between Florida and Swan Island	1 trip	4/14/66
85. DOD	Waiver of 46 U.S.C. 289, 883 to permit specified foreign vessel operation between Florida and Puerto Rico	Period of 2 years	7/8/66
86. DOD	Waiver of 46 U.S.C. 289, 883 to permit two foreign hovercraft to operate in Alaska	Period of 5 years Revokes #83	8/12/66
87. DOD	Waiver of entry, clearance, and coastwise laws to permit foreign cable ship to operate coastwise	Period of 6 months	2/17/67
88. DOD	Waiver of 46 U.S.C. 289, 883 to permit 4 specified foreign vessels to transport merchandise between Florida and Swan Island. Amended to cover transportation on any foreign vessel	Period of 3 years	6/23/67 4/15/69
89. DOD	Waiver of 46 U.S.C. 289, 883 to permit foreign vessels to transport specified quantity of oil from Gulf Coast to certain East Coast Refineries Revoked July 11, 1967.	Period of 30 days	6/30/67
90. DOD	Waiver of entry, clearance, and coastwise laws to permit specified foreign vessel to transport cable between coastwise ports	Until October 31, 1967	7/19/67
91. DOD	Waiver of navigation laws to permit foreign-built hydrofoil vessels to operate within limits of ports of San Francisco and New York.	Period of 15 years but not beyond July 1, 1983	9/21/67
92. DOD	Waiver of entry, clearance and coastwise laws to permit specified foreign vessel to transport cable between coastwise ports	Until November 30, 1967	11/13/67
93. DOD	Waiver of 46 U.S.C. 289, 883 to permit 4 specified foreign vessels to transport cargo and passengers between Florida and Puerto Rico	Period varied for each vessel but no longer than August 7, 1973.	6/10/68

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRAN
94. Treasury	Waiver of 46 U.S.C. 883 to permit specified foreign vessel to transport oil between U.S. ports Suspended March 18, 1970 Revoked August 7, 1970	Vessel to be documented as U.S. flag; American crew to be used; owner to be U.S. corporation	3/2/70
95. FAA	Waiver #88 extended	Terminate June 22, 1971	8/14/70
96. DOD	Waiver of 46 U.S.C. 289, 883 to permit foreign vessel to transport cargo and passengers between Florida and Puerto Rico	Terminate on February 8, 1974	10/14/70
97. Commerce	Waiver of 46 U.S.C. 289, 883 to permit specified foreign vessel to transport cargo and merchandise between Florida and Swan Island.	Period of 1 year	6/9/71
	Extended	Period of 1 year	6/9/72
98. DOD	Waiver of entry, clearance, and coastwise laws to permit specified foreign-built U.S. vessel to transport cable between U.S. ports	Period of 3 months	6/28/72
	Extended	To terminate December 1, 1972	8/22/72
99. DOD	Waiver of navigation laws to permit use of vessels of various nationalties to engage in naval exercise	To terminate on completion of exercise	9/15/72
100. DOD	Waiver #98 extended	To terminate January 1, 1973	12/5/72
101. DOD	Waiver of entry, clearance, and coastwise laws to permit specified foreign-built U.S. vessels to transport cable between U.S. ports	Period of 7 months	5/7/73
102.DOD	Waiver of 46 U.S.C. 289, 883 to permit 3 specified foreign vessels to transport military passengers and cargo between ports in Florida and Puerto Rico	Terminate August 31, 1978	9/17/73

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FEDERAL AGENCY	PURPOSE	SPECIAL CONDITIONS	DATE GRANTI
103. Atomic Energy Commission	Waiver of 46 U.S.C. 883 to permit foreign-flag United States-built vessel to transport nuclear reactor components from Chattanoga, Tenn., to Richland, Wash.	Terminates March 31, 1974	9/20/73
104. DOD	Navigation laws waived to permit the operation of one foreign-built hovercraft in Alaska for a period of 18 months over routes not serviceable by conventional surface transportation.	Terminates 18 months after date of arrival of hovercraft in Alaska	8/9/74
105. Agriculture	Waiver of 46 U.S.C. 883 to permit the transportation of anhydrous ammonia by any foreign-flag vessel from Kenai, Alaska, to Rivergate, (North Portland), Oregon	Terminates December 31, 1975	11/1/74
106. DOD	Waiver of 46 U.S.C. 289, 883 to permit the transportation of military cargo and passengers on the Panamanian MV CANAVERAL between ports in Florida and ports in Puerto Rico, between ports within the State of Florida and between ports within the Commonwealth of Puerto Rico	Terminates July 31, 1979	11/25/75
107. Agricul-	Extension of #105	Terminates December 31, 1976. On condition company expedites construction of replacement United States-flag vessel for service not later than December 31, 1977.	10/29/75
108. DOD	Waiver of 46 U.S.C. 883 and the applicable provisions of law contained in titles 19 and 46 U.S.C. concerning entry and clearance of vessels in order for a foreign vessel to lade and discharge cable and associated handling, testing, and monitoring equipment at United States ports.	Terminates October 12, 1976 (effective July 16, 1976).	5/10/76

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109.	DOD	Waiver of entry, clearance, and coastwise laws to permit specified foreign vessel to transport cable betwen U.S. ports.	Terminates September 24, 1976.	8/24/76
110.	DOD	Extension of #109.	Extended to October 15, 1976.	9/22/76
111.	Agriculture	Extension of #105 (see also #107).	Terminates December 31, 1977, or upon completion of United States-flag vessel being constructed, whichever occurs first. On condition company continues to expedite construction of replacement United States- flag vessel for service not later than 12/31/77.	10/5/76
112.	DOD	Waiver of 46 U.S.C. 883: A. To permit LIBERAIN SS KENIA MULTINA to transport liquified natural gas from Alaska to Mass. for not more than 2 voyages during the period February 1 to May 10, 1977; B. To permit MV TROPIGAS FAR EAST to transport liquified propane gas from US Gulf ports to Virginia for not more than 5 voyages during period of February 3 to April 30, 1977; C. To permit SS SINE AMERSK to transport liquified propane gas from Houston to Linden, New Jersey, for not more than one voyage for a period of 15 days from February 7, 1977 subject to certain conditions.	A. SS KENAI MULTINA - 2 voyages during February 1 to May 10, 1977 B. MV TROPIGAS FAR EAST - 5 voyages during period of February 3 to April 30, 1977 C. SS SINE MAERSK - 1 voyage for 15 days from February 7, 1977	A. 2/1/77 B. 2/3/7 C. 2/7/77
113.	DOD	Waiver of 46 U.S.C. 883 to transport liquified propane gas from Houston, Texas to Virginia in two foreign vessels.	One voyage of each vessel; no more than 6,000 metric tons each.	2/11/77
114.	DOD	Extension of #112 C.	Period of 20 days from February 17, 1977; one voyage; no more than 7,000 metric tons.	2/16/77

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115.	DOD	Extension of #113.	Extention from February 25, 1977 to March 15, 1977; same limitations as #113.	2/25/77
116.	DOD	Extension of #112 C (see also #114).	Extention from March 8 to March 22, 1977; same limitations as #114.	3/8/77
117.	DOD	Extension of #112 A.	Extension from May 10, 1977, to May 17, 1977.	5/5/77
118.	DOD	Waiver 46 U.S.C. 883 to permit foreign-built and registered M/V VULCANUS to lade Government Equipment at Gulfport, Mississippi for ultimate discharge Cristobal, Panama Canal Zone, to make intermediate stops at Johnston Islands to lade additional quantities "Herbicide Orange", and to stop at other U.S. ports to lade bunkers necessary for ship's operation.	One voyage	6/7/77
119.	DOD	Waiver of entry, clearance, and coastwise laws to permit specified foreign vessel to transport cable between U.S. ports.	Terminates October 15, 1977	8/12/77
120.	DOD	Amplification of listing of merchandise in #118.	Terminates October 15, 1977	9/22/77
121.	Agriculture	Extension of #111.	Extended to April 30, 1978 or completion and readiness for service of United States-flag vessel contracted for.	11/18/77
122.	DOD	Extension of #119	Terminates April 1, 1978	12/2/77

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123.	DOD	Waiver of 46 U.S.C. 883 to permit foreign-flag vessel to transport military cargo between Port Canaveral, Florida, and Roosevelt Roads, Puerto Rico.	Terminate August 31, 1978	3/14/78
124.	DOD	Waiver of 46 U.S.C. 289 and 319 to permit two Canadian-flag vessels to transport passengers and their baggage between communities on the Olympic Peninsula and the Kitsap Peninsula, Washington.	Terminates on the earliest of two events: (1) the Hood Canal Bridge is rebuilt or (2) vessels of American registry are secured to accomplish the ferrying.	3/27/79
125.	DOD	Waiver of 46 U.S.C. 883 to permit a foreign vessel to lade and discharge cable at Navy sites off Hawaii.	Terminates November 30, 1980.	12/10/79
126.	DOD	Waiver of 46 U.S.C. 883 to permit a foreign vessel to load and discharge cable at Newington/Portsmouth, New Hampshire; Norfolk, Virginia; Baltimore, Maryland.	February 11 through November 15, 1980.	2/25/80
127.	DOD	Waiver of 46 U.S.C. 883 to permit a foreign-flag vessel to transport LNG from Savannah to Boston.	One voyage during January, 1981.	1/12/81
128.	DOD	Waiver of 46 U.S.C. 883 to permit a foreign-flag vessel to transport a vessel owned by the Navy from Norfolk, Virginia, to Brooklyn, N.Y.	One voyage.	5/4/81
129.	DOD	Waiver of 46 U.S.C. 883 to permit a foreign-flag submersible barge to transport a floating drydock from Orange, Texas to Chester, Pennsylvania.	One voyage; United States-flag tug qualified for coastwise service must be employed for the tow.	8/30/82
130.	DOD	Waiver of 46 U.S.C. 883 to permit a foreign-flag barge to transport a drilling and production jacket from Harbor Island, Texas, to a site on the Outer Continental Shelf.	One voyage	9/22/82

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131.	DOD MARAD Treasury	Waiver of 46 U.S.C. 289 and 883 to permit 1 U.S.-built non-coastwise-qualified jetfoil (Boeing ARIES) to be used in a test of a passenger-freight service in Southeast Alaska.	One year.	12/02/83
132.	DOD MARAD Treasury	Waiver of 46 U.S.C. 298 and 883 to permit 2 foreign-built air cushion vehicles (1 hovercraft and 1 SES vessel) to be used in a test commuter service in San Francisco Bay.	Six months.	05/28/84

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TELEGRAPHIC MESSAGE

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ACCOUNTING CLASSIFICATION &	DATE FILED 12/5/84	FILE VES-3-02-CO:R:CO:C 107225 FH
FOR INFORMATION CALL		
NAME PAUL HELAND	PHONE NUMBER 566-5706	TYPE OF MESSAGE ☐ CODE ☐ NORM ☐

THIS SPACE FOR CAS OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO: DENNIS J. KELLY, ESQ.
DERBY, COOK, QUINBY AND TWEEDT

DEC 6 - 1984

TELEX NO. 278918

INFO: RC, PACIFIC REGION
DISTRICT DIRECTOR, ANCHORAGE, ALASKA

REURTEL NOVEMBER 30, 1984 (OUR REF: 107225), REQUESTING RULING ON USE OF VESSEL AS FLOATING WAREHOUSE TO SUPPLY OIL DRILLING OPERATORS IN BERING SEA OFF ALASKA. VESSEL WOULD LOAD INITIAL INVENTORY OF SUPPLIES AT FOREIGN PORT AND PROCEED UNDER OWN POWER TO BERING SEA. AT SITE OVER OUTER CONTINENTAL SHELF (OCS) DESIGNATED BY OIL COMPANIES VESSEL WOULD ANCHOR. SUPPLY VESSELS WOULD TRANSPORT SUPPLIES AS REQUIRED FROM WAREHOUSE VESSEL TO DRILLING RIGS LOCATED ON OCS IN BERING SEA. WHEN INITIAL INVENTORY OF SUPPLIES REQUIRES REPLENISHMENT, VESSELS WOULD LOAD REPLACEMENT SUPPLIES AT ALASKAN OR OTHER UNITED STATES PORTS AND TRANSPORT THEM TO WAREHOUSE VESSEL. TO ALASKAN OR OTHER UNITED STATES PORT FOR RESUPPLY.

YOU REQUEST RULINGS WHETHER: (1) WAREHOUSE VESSEL MAY BE FOREIGN-FLAG VESSEL, (2) VESSELS TRANSPORTING SUPPLIES FROM

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PAGE NO. 1 NO. OF PGS. 4

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

WAREHOUSE VESSEL AT ANCHOR TO DRILLING RIGS MUST BE UNITED STATES-FLAG VESSELS WITH COASTWISE PRIVILEGES, (3) VESSELS WHICH TRANSPORT REPLACEMENT SUPPLIES FROM ALASKAN OR OTHER UNITED STATES PORTS TO WAREHOUSE VESSEL AT ANCHOR MUST BE UNITED STATES-FLAG VESSELS WITH COASTWISE PRIVILEGES, AND (4) WAREHOUSE VESSEL MAY PROCEED TO ALASKAN OR OTHER UNITED STATES PORT AND DISCHARGE ALL REMAINING SUPPLIES UPON COMPLETION OF CONTRACT.

UNDER 46 U.S.C. 883, NO MERCHANDISE SHALL BE TRANSPORTED BETWEEN POINTS IN UNITED STATES EMBRACED WITHIN COASTWISE LAWS, EITHER DIRECTLY OR VIA FOREIGN PORT, OR FOR ANY PART OF TRANSPORTATION, IN ANY VESSEL OTHER THAN VESSEL BUILT IN AND DOCUMENTED UNDER LAWS OF UNITED STATES AND OWNED BY CITIZENS OF UNITED STATES. FOR PURPOSES OF COASTWISE LAWS, POINT IN UNITED STATES TERRITORIAL WATERS IS CONSIDERED POINT EMBRACED WITHIN COASTWISE LAWS. TERRITORIAL WATERS OF UNITED STATES CONSIST OF TERRITORIAL SEA, DEFINED AS BELT, 3 NAUTICAL MILES WIDE, ADJACENT TO COAST OF UNITED STATES AND SEAWARD OF TERRITORIAL SEA BASELINE.

UNDER 43 U.S.C. 1333(A), LAWS OF UNITED STATES ARE EXTENDED TO "... THE SUBSOIL AND SEABED OF THE OUTER CONTINENTAL SHELF AND TO ALL ARTIFICIAL ISLANDS, AND ALL

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STANDARD FORM 14
REVISED 11-68
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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

INSTALLATIONS AND OTHER DEVICES PERMANENTLY OR TEMPORARILY ATTACHED TO THE SEABED, WHICH MAY BE ERECTED THEREON FOR THE PURPOSE OF EXPLORING FOR, DEVELOPING, OR PRODUCING RESOURCES THEREFROM ... TO THE SAME EXTENT AS IF THE OUTER CONTINENTAL SHELF WERE AN AREA OF EXCLUSIVE FEDERAL JURISDICTION LOCATED WITHIN A STATE."

BASED ON ABOVE AUTHORITIES, (1) WAREHOUSE vessel MAY BE FOREIGN-FLAG VESSEL, WHETHER ANCHORED OVER OCS OR IN UNITED STATES TERRITORIAL WATERS. WITH REGARD TO REPLACEMENT SUPPLIES WAREHOUSE VESSEL RECEIVES FROM UNITED STATES, WAREHOUSE VESSEL MAY NOT TRANSSHIP THOSE SUPPLIES AT POINT OTHER THAN POINT WHERE IT RECEIVED SUPPLIES TO VESSEL FOR TRANSPORTATION TO DRILLING RIG ON OCS. (2) VESSELS WHICH TRANSPORT SUPPLIES FROM WAREHOUSE VESSEL AT ANCHOR TO DRILLING RIGS ON OCS NEED NOT BE COAST-WISE-QUALIFIED IF SUPPLIES WERE BROUGHT BY WAREHOUSE VESSEL OR ANOTHER VESSEL FROM FOREIGN PORT AND POINT OF TRANSSHIPMENT FROM WAREHOUSE VESSEL IS OUTSIDE UNITED STATES TERRITORIAL WATERS. REPLACEMENT SUPPLIES BROUGHT FROM UNITED STATES PORT TO WAREHOUSE VESSEL MUST BE TRANSPORTED BY COAST-WISE-QUALIFIED VESSELS FROM WAREHOUSE VESSEL TO DRILLING RIGS ON OCS. (3) VESSELS WHICH

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NAME	PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MISSING ADDRESS

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

TRANSPORT REPLACEMENT SUPPLIES FROM ALASKAN OR OTHER UNITED STATES PORTS TO WAREHOUSE VESSEL AT ANCHOR MUST BE COASTWISE-QUALIFIED IF SUPPLIES ARE TRANSPORTED FROM WAREHOUSE VESSEL TO DRILLING RIG ON OCS OR ANOTHER COASTWISE POINT. (4) WAREHOUSE VESSEL, IF NON-COASTWISE-QUALIFIED, MAY PROCEED FROM POINT ON OCS WHERE ANCHORED TO UNITED STATES PORT AND DISCHARGE ONLY THOSE SUPPLIES BROUGHT FROM FOREIGN PORT. IF NON-COASTWISE-QUALIFIED, IT MAY NOT DISCHARGE AT PORT IN UNITED STATES SUPPLIES TRANSPORTED TO IT FROM ANOTHER UNITED STATES PORT.

SUPPLIES BROUGHT FROM FOREIGN PORT ON WAREHOUSE VESSEL WILL BE SUBJECT TO ENTRY AND DUTY ON ARRIVAL AT DRILLING RIGS ON OCS OR UNITED STATES PORT.

Kathryn C. Peterson

KATHRYN C. PETERSON
CHIEF
CARRIER RULINGS BRANCH

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ACCOUNTING CLASSIFICATION	DATE RELEASED 1/14/85	FILE VES-3-15-CO:R:CD:C 107277 PH
FOR INFORMATION CALL		
NAME PAUL HEGLAND	PHONE NUMBER 566-5706	TYPE OF MESSAGE ☐ EMERG ☐ ROUT ☐ DEFER'D-ROUTINE
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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO: THEODORE G. DIMITRI, ESQ.
VINSON & ELKINS
FIRST CITY TOWER
HOUSTON, TEXAS 77002

JAN 17 1985

TELEX NO. 762146

INFO: DD, ANCHORAGE, ALASKA
MC, PACIFIC REGION

REURLET DECEMBER 19, 1984, CONCERNING POSSIBLE USE OF FOREIGN-FLAG VESSEL AS FLOATING WAREHOUSE TO SUPPLY OFFSHORE OIL DRILLING OPERATIONS IN BERING SEA OFF ALASKA. YOU ASK FOR CONFIRMATION OF FOLLOWING: (1) FOREIGN-FLAG WAREHOUSE VESSEL DRIFTING OR MANEUVERING FOR STABILITY SLOWLY AT SEA MAY BE USED AS REFUELING STATION FOR HELICOPTERS EN ROUTE BETWEEN UNITED STATES PORTS OR TERRITORY AND OIL DRILLING RIGS ON OUTER CONTINENTAL SHELF AND RETURNING TO UNITED STATES. (2) WAREHOUSE VESSEL MAY REPLENISH ITS SUPPLY OF AVIATION FUEL FOR HELICOPTERS BY CALLING IN UNITED STATES PORTS, OR FROM UNITED STATES COASTWISE-QUALIFIED OR FOREIGN-FLAG SUPPLY VESSELS BRINGING AVIATION FUEL FROM UNITED STATES TERRITORY TO WAREHOUSE VESSEL AT SEA. (3) IF STORAGE OF EMERGENCY OR REPLENISHMENT SUPPLIES FROM UNITED STATES SOURCES IS REQUIRED AT SEA, WAREHOUSE VESSEL MAY ESTABLISH SPECIFIC POINT

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

(E.G., IN LEE OF ISLAND) TO WHICH SUPPLIES MAY BE BROUGHT FROM UNITED STATES PORTS ABOARD COASTWISE-QUALIFIED VESSELS AND FROM WHICH SUCH SUPPLIES THEREAFTER MAY BE TRANSSHIPPED FOR ONWARD CARRIAGE TO OIL DRILLING RIGS ABOARD OTHER COASTWISE-QUALIFIED VESSELS. (4) ONCE WAREHOUSE VESSEL HAS UNITED STATES-SOURCE SUPPLIES ONBOARD, IT MAY RESUME OPERATIONS AT SEA IN VICINITY OF DRILLING RIGS FOR TRANSSHIPMENT OF FOREIGN-SOURCE SUPPLIES ONLY AND MUST RETURN TO SAME STATION IN LEE OF SAME ISLAND AT WHICH UNITED STATES-SOURCE SUPPLIES WERE RECEIVED ONBOARD FOR ANY ONWARD TRANSSHIPMENT OF UNITED STATES-SOURCE SUPPLIES ABOARD PROPERLY COASTWISE-QUALIFIED VESSELS TO DRILLING RIG(S). OK

UNDER 46 U.S.C. 883, NO MERCHANDISE SHALL BE TRANSPORTED BETWEEN POINTS IN UNITED STATES EMBRACED WITHIN COASTWISE LAWS, EITHER DIRECTLY OR VIA FOREIGN PORT, OR FOR ANY PART OF TRANSPORTATION, IN ANY VESSEL OTHER THAN VESSEL BUILT IN AND DOCUMENTED UNDER LAWS OF UNITED STATES AND OWNED BY CITIZENS OF UNITED STATES. FOR PURPOSES OF COASTWISE LAWS, POINT IN UNITED STATES TERRITORIAL WATERS IS CONSIDERED POINT EMBRACED WITHIN COASTWISE LAWS. TERRITORIAL WATERS OF UNITED STATES CONSIST OF TERRITORIAL SEA,

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

DEFINED AS THE BELT, 3 NAUTICAL MILES WIDE, ADJACENT TO COAST OF UNITED STATES AND SEAWARD OF TERRITORIAL SEA BASELINE.

UNDER 43 U.S.C. 1313(A), LAWS OF UNITED STATES ARE EXTENDED TO "... THE SUBSOIL AND SEABED OF THE OUTER CONTINENTAL SHELF AND TO ALL ARTIFICIAL ISLANDS, AND ALL INSTALLATIONS AND OTHER DEVICES PERMANENTLY OR TEMPORARILY ATTACHED TO THE SEABED, WHICH MAY BE ERECTED THEREON FOR THE PURPOSE OF EXPLORING FOR, DEVELOPING, OR PRODUCING RESOURCES THEREFROM ... TO THE SAME EXTENT AS IF THE OUTER CONTINENTAL SHELF WERE AN AREA OF EXCLUSIVE FEDERAL JURISDICTION LOCATED WITHIN A STATE."

BASED ON ABOVE AUTHORITIES, WE CONFIRM YOUR PREMISE (1), ASSUMING POINT WHERE HELICOPTERS ARE REFUELED IS NON-COASTWISE POINT OUTSIDE UNITED STATES TERRITORIAL WATERS. IF POINT OF HELICOPTERS' REFUELING IS COASTWISE POINT, AVIATION FUEL MUST HAVE BEEN TRANSPORTED TO POINT OF REFUELING FROM NON-COASTWISE POINT (E.G., BY WAREHOUSE VESSEL FROM FOREIGN PORT). WE CONFIRM (2), ASSUMING POINT WHERE HELICOPTERS ARE REFUELED WITH SUCH FUEL IS NON-COASTWISE POINT OUTSIDE OF TERRITORIAL WATERS. IF POINT OF HELICOPTERS REFUELING WITH SUCH FUEL

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

IS COASTWISE POINT, WAREHOUSE VESSEL MUST HAVE BEEN REFUELED BY COASTWISE-QUALIFIED SUPPLY VESSEL AND POINT OF HELICOPTERS' REFUELING MUST BE SAME POINT WHERE WAREHOUSE VESSEL WAS REFUELED BY COASTWISE-QUALIFIED SUPPLY VESSEL. WE CONFIRM (3) AND (4).

Kathryn C. Peterson

KATHRYN C. PETERSON
CHIEF
CARRIERS RULINGS BRANCH

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